TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 514.

S. W. VANCE, W. N. BAHR, J. M. SCOTT, W. LIVINGSTON, C. S. MOSELEY, AND M. PETERMAN, APPELLANTS,

vs.

W. A. VANDERCOOK COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA.

FILED NOVEMBER 26, 1897.

(16,727.)

(16,727.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 514.

S. W. VANCE, W. N. BAHR, J. M. SCOTT, W. LIVINGSTON, C. S. MOSELEY, AND M. PETERMAN, APPELLANTS,

vs.

W. A. VANDERCOOK COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA.

INDEX.

	Original.	Print.
Caption	1	1
Bill of complaint	2	1
Exhibit A—List of property sued for	13	7
B—List of property sued for	14	8
C—List of property sued for	15	8
D—List of property sued for	16	8
Subpœna	18	9
Marshal's return of service	20	10
Rule to show cause	21	10
Marshal's return of service	22	11
Return of S. W. Vance to rule to show cause	23	12
W. N. Bahr and J. M. Scott to rule to show cause	28	14
Exhibits to return	35	18
Return of Wm. Livingston, C. S. Moseley, and M. Peterman	43	22
Opinion granting temporary injunction	45	23
Appearance for defendants	59	32
Order for temporary injunction	60	32

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., NOVEMBER 24, 1897.

	Original.	Print.
Writ of temporary injunction	62	34
Marshal's return of service	64	35
Answer of S. W. Vance	65	36
Wm. Livingston, C. S. Moseley, and M. Peterman	71	39
W. N. Bahr and J. M. Scott	73	40
Replication	80	44
Final decree	81	45
Evidence	83	45
Deposition of R. R. Turner	83	45
Letter, Bryan & Bryan to Bahr, April 17, 1897	85	46
Telegram, Bryan & Bryan to Vance, April 21, 1897	85	47
Letter, Bryan & Bryan to Vance, April 21, 1897	86	47
Letter, Bryan & Bryan to Vance, April 23, 1897	87	47
Letter, Bryan & Bryan to Vance, April 28, 1897	88	48
Deposition of W. A. Vandercook	91	50
W. N. Bahr	92	50
Petition for appeal	93	51
Assignment of errors	94	51
Order allowing appeal	97	52
Appeal bond and approval	98	53
Citation	100	54
Service of citation	100	54
Clerk's certificate	101	54

1 *Transcript of Record.*

THE UNITED STATES OF AMERICA, } *To wit:*
District of South Carolina, }

In the Circuit Court, Fourth Circuit. In Equity.

At a circuit court of the United States for the fourth circuit in and for the district aforesaid, on the first Monday in August, A. D. 1897, before the Honorable Charles H. Simonton, circuit judge of the United States for the fourth judicial circuit, holding said court according to the form of the act of Congress in such cases made and provided, the following proceedings were had:

THE W. A. VANDERCOOK COMPANY, a Corporation Created and under the Laws of the State of California, Complainant,

versus

S. W. VANCE, W. N. BAHR, J. M. SCOTT, W. LIVINGSTON, C. S. MOSELEY, and M. PETERMAN, Defendants.

Be it remembered that heretofore, to wit, on the 3rd day of May, A. D. 1897, appeared the said complainant, The W. A. Vandercook Company, in the aforesaid circuit court, by its attorneys, Messrs. Bryan & Bryan, and filed its bill of complaint against the aforesaid defendants; which bill is in the words and tenor following:

2 *Bill of Complaint.*

THE UNITED STATES OF AMERICA, }
District of South Carolina. }

In the Circuit Court, Fourth Circuit. In Equity.

To the honorable the judges of the circuit court of United States for the district of South Carolina:

The W. A. Vandercook Company, a corporation created by and under the laws of the State of California, a citizen and resident of the State of California, bring this their bill against S. W. Vance, W. N. Bahr, J. M. Scott, W. Livingston, C. S. Moseley, M. Peterman, and all other persons claiming to act as constables or officials of the State of South Carolina under the act of the General Assembly of the State of South Carolina generally known as the "dispensary law," approved March 5, 1896, and amended March 6, 1897 (which other persons when their names are discovered your orator prays may be made parties defendant to this bill), citizens and residents of the State of South Carolina; and thereupon your orator complains and says:

I. That your orator was at the times hereinafter mentioned and is now a corporation created by and under the laws of the State of California and a citizen and resident of the State of California, having its principal office and place of business in the city of Alameda, opposite the city of San Francisco, in the State of California.

II. That the defendants, S. W. Vance, W. N. Bahr, J. M. Scott, William Livingston, C. S. Moseley, M. Peterman, were at the times hereinafter mentioned and now are citizens and residents of the State of South Carolina.

3 III. That your orator has for many years heretofore and now is the proprietor of certain well-known vineyards in the State of California known as the vineyards in the San Gabriel, Santa Clara, Fresno, Sonoma, and Napa valleys, and are producers from grapes of such vineyards of its well-known pure wines and brandies and other liquors, particularly of clarets, Rhine wine, Burgundies, and champagnes.

IV. That in the month of February and early part of March, 1897, your orator, by its travelling agent, Robert Randolph Turner, a citizen of the State of Virginia, contracted with and took the orders of certain citizens and residents of the State of South Carolina, residing in the city of Charleston, to deliver to each of the same in the city of Charleston certain original packages of wines and brandies, products of your orator's vineyards, then and there agreed upon and ordered by the said residents respectively in the said city of Charleston, and in pursuance thereof your orator filled said orders and shipped, on 20th day of March, 1897, from San Francisco, California, by the Southern Pacific R. R. ("Sun Set") route, to its agent in the city of Charleston, S. C., one car-load of such wines, &c., products of your orator's vineyards as aforesaid, the wine, &c., for each of said purchasers and customers of your orator in the city of Charleston, as ordered, being in separate original packages in said car contained to the number of seventy-three packages, all marked with your orator's stamp, as follows: "W. A. Vandercook, Los Angeles, California," and also marked with specific brand of wine, &c., respectively, more particularly set forth in the schedule marked "A" and hereto annexed and made part of the bill, and of the value of twelve hundred dollars; that the rate of freight in shipping said wines and packages, &c., by such car-load is only about one-fourth of the rate of shipping by single packages.

V. That on or about the 16th day of April, 1897, the said car-load of wines, &c., as aforesaid, arrived at its destination at

4 Charleston, South Carolina, at the depot of the South Carolina & Georgia Railroad Company, an interstate common carrier between the city of Augusta, in the State of Georgia, and the city of Charleston, in the State of South Carolina, and the last connecting railroad common carrier in the continuous carriage of said goods from the city of San Francisco, in the State of California, to the city of Charleston, S. C., and while in the depot of and in the custody of said South Carolina & Georgia Railroad Company, as aforesaid, at Charleston, South Carolina, the said defendants, W. N. Bahr and J. M. Scott, claiming to act as State constables under the said act of the General Assembly of South Carolina approved March 6, 1896, and amended March 5, 1897 ("dispensary law"), unlawfully and wrongfully seized without warrant the said seventy-three packages and stopped the delivery thereof; and thereafter, on the 19th day of April, 1897, without warrant took and carried away

from the depot of the said South Carolina & Georgia Railroad Company, in the city of Charleston, sixty of the packages of said wines, &c., more particularly set forth in schedule marked "B," hereto annexed and made part of this bill, of the value of eight hundred dollars, and shipped the same on 19th April, 1897, to one John T. Gaston, at Columbia, S. C., claiming to act as "State commissioner" under said "dispensary law," as aforesaid; and thereafter, on or about the 22nd April, 1897, said sixty packages (as set forth in Exhibit "B") came into the possession of the defendant S. W. Vance at Columbia, S. C., claiming then and now to act as "State commissioner" under said dispensary law, with full notice from your orator of said trespass and wrongful seizure, and who now unlawfully refuses and has repeatedly refused to return said wines, packages, &c., and continues, after repeated demands, to unlawfully detain the same and threatens to convert and sell the same to the citizens and residents of the State of South Carolina.

VI. And your orator further shews that the said defendants, W. N. Bahr and J. M. Scott, and other constables, claiming to act as
5 dispensary officials of the State of South Carolina (whose names are unknown to your orator), unlawfully threatened to seize, wherever found, all the wines, &c., whatsoever and for whatsoever purpose of your orator, shipped from San Francisco or elsewhere by your orator and arriving at the city of Charleston by said South Carolina & Georgia Railroad Company, or elsewhere in the State of South Carolina, and to take and carry away same and deliver same to the said S. W. Vance, claiming to act as State commissioner, who also unlawfully threatens to convert and sell the same to the manifest harm, injury, and damage of your orator and the obstruction and destruction of its lawful business and interstate trade and commerce in said wines, &c., with the citizens and residents of the State of South Carolina, secured by and under the Constitution and laws of the United States.

VII. And your orator further shows that since the 20th day of March, 1897, your orator has upon like orders heretofore had and obtained, through its said travelling agent, R. Randolph Turner, from the citizens and residents of the State of South Carolina, further shipped from San Francisco, California, about one-half carload of wines, &c., containing nineteen separate original packages of the value of three hundred dollars, all bearing the stamp of your orator, "W. A. Vandercook, San Francisco and Los Angeles, California," and marked, respectively, with the brand of wine (more particularly set forth in Exhibit "C," hereto annexed and made part of this bill), to its agent at Charleston, S. C., for its said customers, in separate original packages, in fulfilment of their said orders respectively, and said shipment arrived in the city of Charleston, S. C., by the said South Carolina & Georgia R. R., interstate common carrier, as aforesaid, in due course of transportation, on the — day of April, 1897, and that defendants W. N. Bahr, C. S. Moseley, and J. M. Scott and others of said defendants wrongfully seized the same and stopped the delivery thereof from the South Carolina
6 & Georgia Railroad Company on or about the 28th day of April, 1897, and further seized four packages of the same

(being four cases of wine) after delivery of same to the drayman of Eugene L. Tessier, one of said purchasers and customers of your orator, in the depot yard of the said South Carolina & Georgia railroad, and took said four packages from the said dray and carried away the same, and on the 29th day of April, 1897, took from the custody of the South Carolina & Georgia railroad, interstate common carrier, as aforesaid, eight packages of said shipment set forth in Exhibit "D," hereto annexed as part of this bill; and your orator further shows that in fulfilment of further separate specific orders from the citizens and residents of South Carolina, already so obtained by its said travelling agent, R. Randolph Turner, it is now about to ship from San Francisco, California, other shipments in original separate packages of its wines, &c., products of its own vineyards, to its said customers resident in South Carolina, upwards of fifty-eight packages, of the value of seven hundred dollars and upwards, and to ship also continually hereafter to its said customers, residents of the State of South Carolina, in due course of interstate trade and commerce and supply of their continuous want of and demand for the wines and products of your orator's vineyards, large shipments in original separate packages from time to time, exceeding the value of ten thousand dollars ($10,000.00).

VIII. And your orator further shews that your orator intends in the course of its said business, as aforesaid, further and in addition to said shipments so ordered by its said customers in advance, as aforesaid, to ship also from San Francisco, California, to its agent in the State of South Carolina, and to store and warehouse in the State of South Carolina, and to sell in the State of South Carolina, in the original unbroken packages as imported, as aforesaid, to the residents and citizens of the State of South Carolina, its wines and other liquors, products of its vineyards, as aforesaid, for the
7 lawful use and consumption of the said residents and citizens of the State of South Carolina in the due and lawful exercise of your orator's right of importation of such wines, &c., products of its vineyards, into the State of South Carolina in lawful intercourse, trade, and commerce with the citizens and residents of the State of South Carolina, under the Constitution and laws of the United States, all of which shipments, as aforesaid, the defendants and other persons claiming to act as State constables and officials threaten to seize, take, and carry away, detain, convert, and sell, to the manifest wrong, damage, and injury of your orator and its trade and business, as aforesaid.

IX. And your orator further shews that by and under the terms, principle, policy, and operation of the said dispensary law of the State of South Carolina, as aforesaid, approved March 6, 1896, and amended March 5, 1897, all wines, beers, ales, alcoholic, spirituous, and other intoxicating liquors are subjects of lawful manufacture, barter, sale, export, and import in the State of South Carolina, and have been, are being, and will continue to be lawfully used and consumed as a beverage by the citizens and residents of the State of South Carolina.

And your orator further shows that the wines and other liquors,

products of your orator's vineyards, as aforesaid, are lawful subjects of interstate and foreign trade and commerce.

And your orator further shews that the said dispensary law of the State of South Carolina, in so far as it authorizes any of the said acts of the said defendants, or in any way attempts to abridge your orator's right of importation of its said products of its vineyards into the State of South Carolina and there sell, in original imported packages, the same, or in anywise hinders and prevents its intercourse, commerce, and trade with the citizens and residents of the State of South Carolina in the products of its said vineyards, is in conflict with art. I, sec. 8 and 9, of the Constitution of the United States, and is unconstitutional, null, and void.

8 Your orator further shews that previous to the seizure of said packages, as aforesaid, and before the same were taken and carried away and wrongfully detained by said defendants, as hereinbefore alleged, your orator gave repeated notices to said defendants of the right and privilege of your orator under the Constitution of the United States and warned them as to the consequences of their malicious trespass, but, notwithstanding your orator's repeated notices, demands, and warnings, the said defendants have continued and do continue and threaten to continue in their malicious wrongs, as aforesaid, in seizing and carrying away and converting the property of your orator, as aforesaid, and in restraining and breaking up the lawful trade, commerce, and intercourse, as aforesaid, of your orator with the citizens and residents of the State of South Carolina.

X. Your orator further shews that your orator has already, by the repeated wrongs and trespasses of the defendants, been damaged in its lawful business and trade with the citizens and residents of the State of South Carolina upwards of five thousand dollars, and your orator is threatened with *its* complete destruction of your orator's said business and trade, to the damage of your orator upwards of ten thousand dollars.

XI. And your orator further shows that protection of your orator in the premises at law involves a multiplicity of suits against all said defendants, and that all said defendants claiming to act under the said "dispensary law," as aforesaid, are financially irresponsible and unable to respond to any damages against them or either of them, and under their respective and repeated trespasses and wrongful acts your orator's rights, privileges, and immunities, as aforesaid, under the Constitution of the United States, art. I, sec. 8 and 9, have been and are now being and are threatened to be continually invaded and grossly violated by all said defendants

9 without redress and to the irreparable injury of your orator, and to the continuous unlawful restraint of the said trade, commerce, and intercourse of your orator with the citizens and residents of the State of South Carolina, and to the continuous obstruction and destruction of the lawful business of your orator in the sale, as aforesaid, of such wines, &c., products of its vineyards, to the citizens and residents of the State of South Carolina, and the continuous unlawful restraint of the lawful use and consumption

by the citizens and residents of the State of South Carolina of the products of the vineyards of your orator in the said State of California.

XII. And your orator further shews that your orator has no adequate remedy at law, and without the aid and intervention of this honorable court, where the aforesaid matters are properly cognizable, your orator is remediless in the premises.

To the end, therefore, that your orator may obtain the relief to which it is justly entitled in the premises, it now prays the court to grant it due process by subpœna directed to said S. W. Vance, W. N. Bahr, J. M. Scott, C. S. Moseley, W. Livingston, M. Peterman, defendants hereinbefore named, requiring each of them to appear herein and answer (but not on oath, the same being expressly waived) the several allegations in this your orator's bill contained.

And your orator further prays that upon final hearing it be ordered and decreed that a writ of injunction do issue out of this honorable court enjoining and commanding the defendants and all other persons claiming to act as constables or officials under the said "dispensary law" of the State of South Carolina, as aforesaid, from seizing or attempting to seize, in transit or after
10 arrival or otherwise, carrying away or confiscating, converting, or detaining any of the wines and liquors imported or sent into the State of South Carolina by your orator from his said vineyards, as aforesaid, for the use of the citizens and residents of the State of South Carolina, having the mark and stamp of your orator thereon, to wit, "W. A. Vandercook Co., Los Angeles, California," or from hindering and preventing your orator in further importing and sending into the State of South Carolina for such sale and storing and warehousing and selling in original unbroken packages, as imported, in the State of South Carolina, the wines and liquors, products of the vineyards of your orator, as aforesaid, for lawful use and consumption of the citizens and residents of the State of South Carolina, and from seizing anywhere within the State of South Carolina any of such wines, as aforesaid, sold in original packages, as imported into the State of South Carolina by your orator, to the citizens and residents of South Carolina for their lawful use and consumption, and commanding and enjoining all said defendants from interfering with or hindering and preventing your orator or any of its agents or servants and officers in any way whatsoever from carrying on interstate commerce and intercourse, as aforesaid, in such wines and spirituous liquors, as aforesaid, with the citizens and residents of the State of South Carolina, secured to them and to your orator by the laws and Constitution of the United States, or hindering and preventing in any way any person, citizen, or resident of the State of South Carolina from engaging in such trade, commerce, and intercourse with your orator, or from holding, possessing, using, or consuming the said wines and spirituous liquors sent into the State of South Carolina by your orator or imported and sold in original packages in the State of South Carolina

by your orator to the citizens and residents of the State of South Carolina.

11 Therefore your orator prays this honorable court to now grant it a temporary writ of injunction, restraining and enjoining the said defendants and all other persons claiming to act as constables or officials under the said "dispensary law" of the State of South Carolina, as aforesaid, from seizing or attempting to seize, in transit or after arrival or otherwise, carrying away or confiscating, converting, or detaining any of the wines and liquors imported or sent into the State of South Carolina by your orator from his said vineyards, as aforesaid, for the use of the citizens and residents of the State of South Carolina, having the mark and stamp of your orator thereon, to wit, "W. A. Vandercook, San Francisco and Los Angeles, California," from hindering and preventing your orator in further importing or sending into the State of South Carolina for such sale and storing and warehousing and selling in original unbroken packages, as imported, in the State of South Carolina, the wines and liquors, products of the vineyards of your orator, as aforesaid, for lawful use and consumption — and residents of the State of South Carolina, and from seizing anywhere within the State of South Carolina any of such wines, &c., as aforesaid, sold in original packages, as imported into the State of South Carolina by your orator, to the citizens and residents of the State of South Carolina for their lawful use and consumption, and commanding and enjoining all said defendants from interfering with or hindering and preventing your orator or any of its agents or servants and officers in any way whatsoever from carrying on interstate trade, commerce, and intercourse, as aforesaid, in such wines and spirituous liquors, as aforesaid, with the citizens and residents of the State of South Carolina, secured to them by the laws and Constitution of the United States, or hindering and preventing in any way any person, citizen, or resident of the State of South Carolina from engaging in such trade, commerce, and intercourse

12 with your orator, or from holding, possessing, using, or consuming the said wines and spirituous liquors sent into the State of South Carolina by your orator or imported and sold in original packages in the State of South Carolina by your orator to the citizens and residents of the State of South Carolina.

And your orator further prays for such other and further relief as may be just and equitable.

BRYAN & BRYAN,
Complainant's Solicitors.

(Filed May 3rd, 1897.)

13 EXHIBIT "A."

41 kegs wine, California.
10 kegs brandy, California.
20 cases wine, California.
2 cases champagne, California.

—

73 packages.

All marked "J. S, Charleston, S. C.," and having stamp of "W. A. Vandercook, Los Angeles, California."
(Filed May 3rd, 1897.)

14 EXHIBIT "B."

14 cases California wine.
33 kegs California wine.
½ barrel California wine.
1 case champagne (California).
½ case champagne (California).
1 case brandy (California).
9 kegs brandy (California).

All marked "J. S., Charleston," and all bearing the stamp "W. A. Vandercook, Los Angeles, California."
(Filed May 3rd, 1897.)

15 EXHIBIT "C."

5 gals. California brandy.
5 " " "
1 case California assorted wine.
2 " " "
1 " " "
1 " " claret.
1 " " Reesling.
5 gals. " claret.
1 case " claret.
1 " " Burgundy.
1 " " Sauterne.
1 " " assorted wine.
1 " " "
1 " " Angelica.
10 gals. " claret.
1 case " Sauterne.
1 case " assorted wine.
1 " " "

19 packages.

All marked ("J. S., Charleston") and all bearing the stamp "W. A. Vandercook, San Francisco, Los Angeles, California."
(Filed May 3rd, 1897.)

16 EXHIBIT "D."

1 case California assorted wines.
1 case California Angelica wines.
1 case California assorted wines.
1 keg (5 gals.) California claret.
1 case California Reisling.
1 keg California brandy.
1 keg California brandy.
1 case California assorted wines.

All marked ("J. S., Charleston") and all bearing the stamp, "W. A. Vandercook, Los Angeles, California."
(Filed May 3rd, 1897.)

17 THE UNITED STATES OF AMERICA, }
District of South Carolina. }

Personally appeared R. Randolph Turner, agent of the complainant, W. A. Vandercook Co., and makes oath that he has read the foregoing bill of complaint, and that the facts therein stated are true to his own knowledge.

R. RANDOLPH TURNER.

Sworn to before me this 30th day of April, 1897.

ARTHUR BRYAN,
[SEAL.] *Notary Public for S. C.*

(Filed May 3rd, 1897.)

18 *Subpœna ad Re.*

THE UNITED STATES OF AMERICA, }
Fourth Circuit, District of South Carolina. }

The President of the United States of America to S. W. Vance, W. N. Bahr, J. M. Scott, W. Livingston, C. S. Moseley, M. Peterman:

You are hereby strictly commanded and firmly enjoined that, all manner of excuses being laid aside, you be and appear before the judges of the circuit court of the United States for the district of South Carolina, at Charleston, on the first Monday of June, 1897, twenty days after the service thereof, then and there true and perfect answer to make, upon your corporal oath on the Holy Evangelists, to all such matters as shall be objected against you in the bill of complaint of W. A. Vandercook Company.

And also that you do, on the rules day next immediately after the day appointed and expressed, file or caused to be filed in the registry of said court your plea, answer, or demurrer to the said bill of complaint.

Hereof fail not, under the pain of one hundred pounds.

Given under the seal of the said court.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States of America, at Charleston, South Carolina, district aforesaid, the third day of May, in the year of our Lord one thousand eight hundred and ninety-seven, and in the one hundred and twenty-first year of the sovereignty and Independence of the United States of America.

BRYAN & BRYAN,
Complainant's Solicitors.

19 *Memorandum.*

The defendants will take notice that they are required to enter their appearance in this suit, in the clerk's office of the circuit court of the United States for the district of South Carolina, on or before

the first Monday of June, 1897; otherwise the bill will be taken *pro confesso* against them.

J. E. HAGOOD,
C. C. C. U. S., Dist. S. C.

[SEAL.]

(Filed May 3rd, 1897.)

20 *Marshal's Return of Service.*

UNITED STATES OF AMERICA,
District of South Carolina.

John T. Thornton, dep. marshal, being first duly sworn, saith on oath that he has served the within writ on S. W. Vance, the defendant herein, by delivering to him personally a copy thereof, at the same time exhibiting to him the original, at his place of business, State dispensary, at Columbia, S. C., on this 4th day of May, 1897, and he knows the said S. W. Vance to be the defendant named herein, and that deponent is not a party to this action.

J. T. THORNTON,
Deputy Marshal.

Subscribed and sworn to before me this 4th May, 1897.

JOHN BAUSKETT, [L. S.]
U. S. Commissioner for South Carolina District.

H. J. Hickson, deputy U. S. marshal, being duly sworn, says that he served a copy of the within *subpoena ad re.* personally upon W. N. Bahr, J. M. Scott, W. Livingston, C. S. Moseley on the 3rd day May, 1897, and personally upon M. Peterman on the 4th day May, 1897, all in the city of Charleston, S. C.

H. J. HICKSON,
Office Deputy U. S. M.

Sworn to before me May 18, 1897.

J. E. HAGOOD,
C. C. C. U. S., Dist. S. C.

21 *Rule to Show Cause.*

THE UNITED STATES OF AMERICA,
District of South Carolina.

In the Circuit Court, Fourth Circuit. In Equity.

W. A. VANDERCOOK COMPANY, a Corporation Created by and under the Laws of the State of California, Complainant,

vs.

S. W. VANCE, W. N. BAHR, J. M. SCOTT, W. LIVINGSTON, C. S. Moseley, M. Petermann, Citizens and Residents of the State of South Carolina, Defendants.

On hearing and filing the bill of complaint herein and on motion of Bryan & Bryan, complainant's solicitors—

It is ordered that the defendants shew cause before this court on

Monday, May seventeenth (17th), 1897, at 10 a. m., or as soon thereafter as counsel can be heard, at Charleston, South Carolina, why the injunction as prayed in the bill should not issue.

CHARLES H. SIMONTON,
Circuit Judge.

3rd May, 1897.

(Filed May 3rd, 1897.)

22 *Marshal's Return of Service.*

UNITED STATES OF AMERICA, }
District of South Carolina. }

John T. Thornton, dep. marshal, being duly sworn, saith on oath that I have this 4th day of May, 1897, personally served the within rule to show cause on the defendant S. W. Vance by delivering to him a certified copy thereof, and at the same time exhibiting the original to him, at his place of business, State dispensary, at Columbia, So. Ca., and that — knows the said S. W. Vance to be the defendant named herein, and deponent is not a party to this action.

J. T. THORNTON,
Deputy Marshal.

Subscribed and sworn to before me this 4th day of May, 1897.

JOHN BAUSKETT, [L. S.]
U. S. Com'r for So. Ca. District.

H. J. Hickson, deputy U. S. marshal, being duly sworn, says that he served a copy of the within "rule to shew cause" personally upon W. N. Bahr, J. M. Scott, W. Livingston, C. S. Moseley on the 3rd day May, 1897, and personally upon M. Peterman on the 4th day May, 1897, all in the city of Charleston, S. C.

H. J. HICKSON,
Office Deputy U. S. Marshal.

Sworn to before me May 18, 1897.

J. E. HAGOOD,
C. C. C. U. S., Dist. S. C.

(Filed May 4th, 1897.)

23 *Return to Rule of S. W. Vance.*

THE UNITED STATES OF AMERICA,
District of South Carolina.

In the Circuit Court, Fourth Circuit. In Equity.

W. A. VANDERCOOK COMPANY, a Corporation Created by and under the Laws of California, Complainants,
against
S. W. VANCE, W. N. BAHR, J. M. SCOTT, WM. LIVINGSTON, C. S. Moseley, M. Peterman, Citizens and Residents of the State of South Carolina, Defendants.

To the honorable the judges of the circuit court of the United States for the district of South Carolina:

And now comes S. W. Vance, upon whom has been served an order requiring him to show cause before this honorable court on Monday, the 17th day of May, 1897, at 10 o'clock a. m., or as soon thereafter as counsel can be heard, at Charleston, South Carolina, why the injunction prayed for in the bill in the above-entitled cause should not be granted, — says:

1st. That he submits that the bill presents no question arising under the Constitution or laws of the United States to give jurisdiction to this honorable court.

2nd. That he submits that the bill is defective in its allegations and does not state a case coming within the jurisdiction of the court.

3rd. He submits that the bill presents no case upon which the jurisdiction of a court of equity can be founded, as there are plain and adequate remedies at law for the correction of any of
24 the matters and things alleged if the said allegations be true.

Respondent further says:

I. He has no knowledge or information sufficient to form a belief as to the matters and things set forth in the 1st, 3rd, 4th, 7th, 8th, 9th, 10th, 11th, and 12th paragraphs of the bill.

II. He admits the second paragraph of the bill.

III. That as to the matters and things set forth in the 5th and 6th paragraphs of the bill he knows nothing except that certain packages of wine and liquors were shipped to him as State commissioner by the State constable, J. M. Scott, from Charleston, South Carolina, on the 19th day of April, 1897, and which were received by him as such commissioner in due course of transportation, the bill of lading for which is hereto attached and made a part of this return; that he received sixty packages, as shown in said bill of lading, and deposited them in the State dispensary, where they are now; that he received from Constable Bahr an appraisement of the said packages and contents, made by S. J. J. Browning, Wm. J. Schneider, and L. S. Byrd, on the 19th day of April, 1897, and sworn to by them, a copy of which original paper is hereto attached as a

part of this return; that he did receive three telegrams from Bryan & Bryan, purporting to be attorneys for owners of said packages, in relation to same of about the purport stated in the 5th paragraph of the bill, and also received one letter from the said attorneys of about the same purport, and that he replied to said messages and letter and did refuse to return the said packages because he believed and was advised that as State commissioner he could not return them for the reason that they had been lawfully seized by the State constables and came rightfully and legally in his possession; that he is advised that the dispensary law of South Carolina approved March 6th, 1896, and as amended 6th March, 1897,
under which the said packages were seized and are now held
25 by him as State commissioner, is an act in the lawful exercise
of the police power of the State, and is not in conflict with the Constitution of the United States and the acts of Congress; that he denies that he is financially irresponsible, as charged in the bill, and also according to the best of his information; that the complainant has — or will be damaged ten thousand dollars.

Respondent further says he denies he is threatening as State commissioner or otherwise to convert and sell the said sixty packages to the wrongful harm and injury of the complainant, but repeats that he is still holding them as a State officer charged with specific duties and not with any intent to hinder or obstruct interstate commerce or to injure the plaintiff in any way, and submits that this honorable court has no jurisdiction to interfere by way of injunction with his duties as State commissioner.

Respondent states that he is at present State commissioner duly appointed and commissioned under the dispensary law; has given the official bond required, and is now and has been since the 20th day of April, 1897, engaged in discharging the duties of his said office.

S. W. VANCE.

Sworn to and subscribed before me this 15th day of May, A. D. 1897.

C. P. TOWNSEND, *Not. Pub.* [L. S.]

(Filed May 17th, 1897.)

26 South Carolina State Dispensary.

STATE OF SOUTH CAROLINA, }
Charleston County. }

Contraband Liquors Seized under Act of December 23rd, 1893, Known as the Dispensary Law, and Appraised for Confiscation.

2 cases champagne, 12 pints each, valued at						$18.00	per	case.		$36	00
1 case brandy,	"	"	"	"	"	4.80	"	"	.	4	80
14 " wine,	"	"	"	"	"	2.40			.	33	60
1 5-gal. keg Angelica wine,				"	"	1.00	per	gal.	.	5	00
1 5 " " Catawba wine, each				"	"	1.00	"	"	.	5	00
8 gals. of claret, XXX,				"	"	1.00	"	"	.	40	00

1 gal. J. B. wine,	valued at	$1.00	per gal..	$5 00
2 10-gal. kegs claret, XXX,	" "	1.00	" " ..	20 00
6 5-gal. port, XX,	" "	1.00	" " ..	30 00
2 10-gal. kegs port, XX,	" "	1.00	" " ..	20 00
4 5-gal. kegs Sheny, XX,	" "	1.00	" " ..	20 00
7 5-gal. kegs Sheny,	" "	1.00	" " ..	10 00
1 10-gal. keg Sheny, XXX,	" "	1.00	" " ..	10 00
1 10-gal. keg Sheny, V,	" "	1.00	" " ..	10 00
1 10-gal. keg Sheny, XX,	" "	1.00	" " ..	10 00
6 5-gal. kegs grape brandy,	" "	2.00	" " ..	60 00
1 10-gal. keg grape brandy,	" "	2.00	..	20 00
1 5-gal. keg grape brandy, XX,	" "	2.00	..	10 00
1 5-gal. keg grape brandy, XXX,	" "	2.00	" " ..	10 00
2 5-gal. keg J. V.,	" "	2.00.....		20 00
1 5-gal. keg rock,	" "	2.00.		10 00
1 half barrel Sheny wine, 27½ gal.,	" "	.80.....		22 00

27 We, the undersigned citizens of the State and county aforesaid, duly appointed as appraisers in the above case, on oath do say that the above-described whiskies, wines, etc., are, and we value the same at, four hundred and eleven dollars and forty cents.

S. J. J. BROWNING.
WM. SCHNEIDER.
L. G. BYRD.

Sworn to before me this 19th day of April, 1897.
JOHN W. HILLIAM, *Not. Pub.*

(Filed May 17th, 1897.)

28 *Return to Rule of W. N. Bahr and J. M. Scott.*

THE UNITED STATES OF AMERICA, }
District of South Carolina. }

In the Circuit Court, Fourth Circuit. In Equity.

W. A. VANDERCOOK COMPANY, a Corporation Created by and under the Laws of the State of California, Complainants,
against
S. W. VANCE, W. N. BAHR, J. M. SCOTT, W. LIVINGSTON, C. S. Moseley, M. Peterman, Citizens and Residents of the State of South Carolina, Defendants.

To the honorable the circuit judges of the circuit court of the United States for the district of South Carolina:

And now comes W. N. Bahr and J. M. Scott, defendants in above-entitled action, upon whom has been served an order requiring them to show cause before this honorable court, on Monday, the 17th day of May, 1897, at 10 o'clock a. m., or as soon thereafter as counsel can be heard, at Charleston, South Carolina, why the injunction prayed for in the bill should not be granted, — say:

I. They submit that the bill presents no question arising under

the Constitution or laws of the United States to give jurisdiction to this honorable court.

II. They submit that the bill is defective in its allegations and does not state a case coming within the jurisdiction of this court.

III. They submit that the bill presents no case upon which the jurisdiction of a court of equity can be founded, as there are
29 plain and adequate remedies at law for the correction and redress of the matters and things alleged.

Your respondents further show that W. N. Bahr is chief State constable and J. M. Scott is State constable, duly appointed and commissioned, and were engaged in the discharge of their duties as such at the times hereinafter mentioned.

I. They say as to the matters and things set forth in the first paragraph of this bill they have no knowledge or information sufficient to form a belief, and demand proof of same.

II. That they admit the allegation of the second paragraph of the bill.

III. That as to the matters and things set forth in the 3rd paragraph of the bill they have no information or knowledge sufficient to form a belief, and demand proof of same.

IV. That as to the allegations of the 4th paragraph of the bill they have no knowledge or information sufficient to form a belief, except as to those relating to the arrival of seventy-three packages of wine and brandies in Charleston, South Carolina, about the time therein stated, and they say that the said packages were in one car, and on the waybill all the wines and brandies were consigned to J. C. Simonds, cashier of one of the national banks in said city, and each package was marked J. C. Simonds, and none of them had the certificate of the State chemist attached showing the wines and brandies had been analyzed, as required by law.

V. As to the matters and things set forth in the 5th paragraph, they admit on or about the 15th day of April, A. D. 1897, the car-load of wines and brandies mentioned in said paragraph did arrive at Charleston, S. C., its point of destination, over the South Carolina & Georgia railroad, and that your respondents, as State constables, did hold up seventy-three packages of wine and liquors in the depot of the said railroad for investigation under the
30 provisions of the dispensary law of South Carolina, and that said packages had arrived in a car, but had been unloaded, and the waybill in the possession of the agent of the said railroad was examined and showed that the entire car-load had been consigned to J. C. Simonds, cashier of First National bank, and each package was marked in his name, and same was delivered to him on 15th day of April, 1897; that after holding up said wines and brandies your respondent Bahr made inquiry and investigation into the matter and on the 18th day of April, A. D. 1897, he received through telephone a message from Messrs. Buist & Buist that they desired to see him at their office, and he immediately went there and found Mr. Henry Buist and J. C. Simonds in the office, and after some conversation he turned over to J. C. Simonds, cashier of First National bank, the party to whom the packages had

been consigned, the seventy-three packages of wine and brandies held up at the depot of the South Carolina & Georgia railroad, and at the same time telephoned from the said office to the agent of the railroad and notified him that he had so turned over to J. C. Simonds the said packages and asked him to so inform Constable J. M. Scott, who had held them up; that he received a letter from J. H. Vaughn, said agent of the railroad, that the goods consigned to J. C. Simonds had been delivered to him and bill of lading had been surrendered by him, as will appear from said letter hereto attached as Exhibit "A;" that your respondent Bahr, after so releasing and turning over to J. C. Simonds the said packages, saw J. M. Scott, his co-respondent, and was informed by him that the railroad agent was delivering the wines and brandies on order of J. C. Simonds, when he immediately went to the depot and found that several parties had received packages and had removed them from the depot on orders of J. C. Simonds on the payment of the invoice price of same to him; that after learning these facts he again seized the remaining packages left in the depot on the 17th day
31 of April, 1897, had the same appraised, marked, and shipped to S. W. Vance, State commissioner, Columbia, S. C., who now has the possession of same, and a copy of said appraisement, showing number of packages seized and value of same, is hereto attached as a part of this return; that after the seizure of said packages several citizens of Charleston, to whom invoices of some of said wine and brandies had been sent, came to your respondent Bahr and asked him to endorse the invoices, so that they could get the packages from the depot; to all of whom he replied that he had nothing held up in their names and had no authority to endorse the invoices, as all the liquor seized was marked and consigned to J. C. Simonds, and that the railroad agent would not recognize any orders for delivery of same except from J. C. Simonds; that Mr. A. W. Petit, who held one of these invoices and also a notice from J. C. Simonds, cashier, gave to your respondent Bahr the originals, which are hereto attached as a part of this return, and that two other parties, D. Rohde and C. L. Schmanke, also had invoices sent to them through the mail by the complainant, which they gave to him, and they are herewith exhibited; that your respondent Bahr saw in the possession of Dr. Buist the notice sent to him by J. C. Simonds and the receipt for the money paid to him when order was given on railroad agent for his package.

Your respondent Bahr further says that R. R. Turner, the agent of the complainant, while soliciting orders in Charleston, S. C., for these wines and brandies, came to his home and stated to him that he had sold a car-load to different parties in the city and intended to ship them in a car-load lot to J. C. Simonds; wherefore respondent advised him not to ship such wines and brandies in one man's name, but to make each individual package separate, and to send to each a bill of lading. Turner then remarked he had been shipping to one man before as he proposed to ship to J. C. Simonds and had never been molested, and he intended to do so again; that it was

about three weeks after this conversation before the car-load
32 arrived and was unloaded in the depot.

That since the seizure of the sixty packages, to wit, on the 16th day of April, 1897, he did hold up four packages of wine shipped and consigned to E. L. Tessier, Charleston, S. C., at the depot of the South Carolina & Georgia railroad, but released the same after investigation; that subsequently to this he did seize, on the 29th day of April, 1897, 8 packages of wine and brandies consigned by the complainant to J. C. Simonds, shipped into Charleston over the South Carolina & Georgia railroad, which said packages Mr. Simonds refused to accept or have anything to do with, and R. R. Turner, the agent of the complainant, made efforts to sell the said packages to parties in Charleston; that upon receiving this information from parties to whom he made efforts to sell he then went before R. R. Gilchrist, a magistrate, and took out a warrant and seized said 8 packages under same, which were shipped to S. W. Vance, State commissioner, Columbia, S. C.

And your respondents deny that the seizure of the said sixty packages or the eight packages mentioned herein was unlawful, and they submit that under the dispensary act approved March 6th, 1897, amended by act approved March 26th, 1897, that they had authority to seize and hold the same, a copy of which said act is hereto attached.

VI. That as to the matters and things set forth in the 6th paragraph of the bill your respondents say that W. N. Bahr is one of the chief State constables, and that J. M. Scott, Wm. Livingston, and C. S. Moseley are State constables; that M. Peterman is one of the policeman of the city of Charleston, and S. W. Vance is State commissioner. They deny that they are threatening or have threatened all the wines to be shipped into the State by the complainant.

VII. That as to the matters and things stated in the 7th paragraph of the bill they have already fully answered, as they have stated that four packages were shipped to E. L. Tessier and
33 seized, but were returned to him, and that eight other packages have been seized consigned to J. C. Simonds and are still held, and did not seize 19 packages, as therein stated; and they deny that they unlawfully seized said packages, but submit they had the authority to do so under the dispensary act approved March 6th, 1896, and as amended March 26th, 1897, and also deny that the complainant has or will be damaged ten thousand dollars.

VIII. They know nothing about the intention of the complainant as to shipment of wines and brandies into the State from their vineyards, but deny that they have threatened to seize, take away, detain, convert, and sell any packages so to be imported by them, to the injury and damage to their trade and business.

IX. Your respondents deny all the matters set forth in the 9th paragraph except as to those relating to letters written to them by attorneys for the complainant, and they admit they did receive two letters—one on the 17th day of April, 1897, before the seizure of the car-load, and one afterwards—of about the import stated, but they

deny they threatened to continue to seize liquors and to break up the lawful trade, commerce, and intercourse of trade.

XX. Your respondents deny the matters and things charged in the 10th paragraph of the bill.

XI. They deny all the matters and things set forth in the 11th paragraph except that charging that they are pecuniarily irresponsible, and this they admit.

XII. They deny the allegations set forth in the 12th paragraph, and submit, as they are advised, that the complainant has an adequate remedy of the law. Your respondents for further cause show that from all the facts herein stated, which can be fully established,

34 the car-load of wine and brandies was delivered to J. C. Simonds by the railroad company, and when so delivered he acquired title to the same, and the complainant cannot maintain the above, it is not the real party in interest.

WM. N. BAHR.
J. M. SCOTT.

Sworn to and subscribed before me this 17th day of May, A. D. 1897.

C. P. TOWNSEND, [L. S.]
Not. Pub.

WM. A. BARBER,
Att'y Gen'l, Att'y for Respondents.

(Filed May 17th, 1897.)

35 EXHIBITS TO RETURN OF W. N. BAHR AND J. M. SCOTT.

First National Bank of Charleston, S. C.

CHARLESTON, S. C., 4, 15, 1897.

To Mr. A. W. Petit:

Please call at this bank and attend to draft drawn on you by W. A. Vandercook, San Fran., Cal. Goods are here. On pay't of d'ft we give you order on R. R. for same for $14.25.

JOHN C. SIMONDS, *Cashier.*

36 Pay no bills to salesman except on our written order.

After delivery to railroad in good order our responsibility ceases.

Any claim for allowance must be made within 24 hours after receipt of goods.

Cable: "Santiago."

ALAMEDA, CAL., *Mar.* 20, 1897.

Mr. A.W. Petit, Charleston, S. C., bought of W. A. Vandercook Co. (wholesale).

Pure California wines and brandies. Vineyards in San Gabriel, Fresno, Santa Clara, Sonoma, and Napa valleys.

Terms: Sight draft, c. o. 1st Nat'l bank, Charleston, S. C.

5 gals. S. Catawba, V–1.25	6 25
4 qts. sherry, 2 X 4 qts. port, 2 X 4 qts. brandy, 2 X	8 00
Keg	00
	$14 25

To secure cheapest transportation, we ship above goods, with others, to J. C. Simonds, cashier 1st Nat. bank. Conforming to terms of order, we draw at sight, and instruct collecting bank to hold the draft for payment until goods arrive, if you so request, when they present it.

37 Pay no bills to salesman except on our written order.

After delivery to railroad in good order our responsibility ceases.

Any claim for allowance must be made within 24 hours after receipt of goods.

Cable: "Santiago."

ALAMEDA, CAL., *Mar.* 20, 1897.

Mr. D. Rohde, Charleston, S. C., bought of W. A. Vandercook Co. (wholesale).

Pure California wines and brandies. Vineyards in San Gabriel, Fresno, Santa Clara, Sonoma, and Napa valleys.

Terms: Sight draft, c. o. 1st Nat'l bank, Charleston, S. C.

10 gals. claret, 3 X, .75	7 50
Keg	1 00
	$8 50

To secure cheapest transportation, we ship above goods, with others, to J. C. Simonds, cashier 1st Nat. bank. Conforming to terms of order, we draw at sight and instruct collecting bank to hold the draft for payment until goods arrive, if you so request, when they present it.

38 Pay no bills to salesman except on our written order.

After delivery to railroad in good order our responsibility ceases.

Any claim for allowance must be made within 24 hours after receipt of goods.

Cable: "Santiago."

ALAMEDA, CAL., *Mar.* 20, 1897.

Mr. C. L. Schmanke, Charleston, S. C., bought of W. A. Vandercook Co. (wholesale).

Pure California wines and brandies. Vineyards in San Gabriel, Fresno, Santa Clara, Sonoma, and Napa valleys.

Terms: Sight draft, c. o. 1st Nat'l bank, Charleston, S. C.

10 gals. brandy, V, 2.75	27 50
5 gals. port, XX, 1.50	7 50
Kegs	2 00
	$37 00

To secure cheapest transportation, we ship above goods, with others, to J. C. Simonds, cashier 1st Nat. bank. Conforming to terms of order, we draw at sight and instruct collecting bank to hold the draft for payment until goods arrive, if you so request, when they present it.

39 (Envelope.)

If not called for in ten days return to
W. A. Vandercook Co.,
San Francisco, . . California.

Alameda, Cal.,
11.30 a. m.,
Mar. 24, '97.

Stamp.

Mr. C. L. SCHMANCKE,
560 *King St.*,
Charleston, S. C.

40 South Carolina and Georgia Railroad Co.

L. A. Emerson, traffic manager.

OFFICE TRAFFIC MANAGER,
CHARLESTON, S. C., *April 19th*, 1897.

Mr. W. N. Bahr, chief constable, city.

DEAR SIR: The goods consigned to J. C. Simonds, cashier First National bank, have already been delivered to him and bill of lading taken from him. Consignee was notified that the goods were his, by direction of yourself. I would ask on behalf of the railroad company that you remove the goods from our warehouse, so that we may not be complicated with the consignee, who has threatened us with heavy damages under the interstate law if the goods remain on our premises.

Yours truly,
(S'g'd) J. H. VAUGHAN, *Agent.*

41 South Carolina State Dispensary.

STATE OF SOUTH CAROLINA, }
Charleston County. }

Contraband Liquors Seized under Act of December 23rd, 1893, Known as the Dispensary Law, and Appraised for Confiscation.

2 cases champagne, 12 pints each, valued at		$18.00	per case..	$36	00
1 case brandy, " " "		4.80	" ..	4	80
14 " wine, " " "		2.40	" ..	33	60
1 5-gal. keg Angelica wine,	"	1.00	per gal...	5	00
1 5- " Catawba wine, each	"	1.00	" ..	5	00
8 gals of claret, XXX,	"	1.00	" ..	40	00
1 gal. J. B. wine,	"	1.00	" ..	5	00
2 10-gal. kegs claret, XXX,	"	1.00	" ..	20	00
6 5-gal. port, XX,	"	1.00	" ..	30	00
2 10-gal. kegs port, XX.	"	1.00	" ..	20	00
4 5-gal. kegs Sheny, XX,	"	1.00	" ..	20	00
7 5-gal. kegs Sheny,	"	1.00	" ..	10	00
1 10-gal. keg Sheny, XXX,	"	1.00	" ..	10	00
1 10-gal. keg Sheny, V,	"	1.00	" ..	10	00
1 10-gal. keg Sheny, XX,	"	1.00	" ..	10	00
6 5-gal. kegs grape brandy,	"	2.00	" ..	60	00
1 10-gal. keg grape brandy,	"	2.00	..	20	00
1 5-gal. keg grape brandy, XX.	"	2.00	..	10	00
1 5-gal. keg grape brandy, XXX,	"	2.00	" ..	10	00
2 5-gal. keg J. V.,	"	2.00	..	20	00
1 5-gal keg rock,	"	2.00	..	10	00
1 half barrel Sheny wine, 27½ gal.,	"	.80	..	22	00

42 We, the undersigned, citizens of the State and county aforesaid, duly appointed as appraisers in the above case, on oath do say that the above-described whiskies, wines, etc., are —, and we value the same at, four hundred and eleven dollars and forty cents.

S. J. J. BROWNING.
WM. SCHNEIDER.
L. G. BYRD.

Sworn to before me this 19th day of April, 1897.

JOHN H. HILLIAM, *Not. Pub.*

(Filed May 17th, 1897.)

43 *Response to Rule of Wm. Livingston, C. S. Moseley, and M. Peterman.*

UNITED STATES OF AMERICA,
District of South Carolina, Fourth Circuit.

W. A. VANDERCOCK COMPANY, a Corporation Created by and under the Laws of California, Complainants,
against
S. W. VANCE, W. N. BAHR, J. M. SCOTT, WM. LIVINGSTON, C. S. Moseley, M. Peterman, Citizens and Residents of the State of South Carolina, Defendants.

To the honorable the judges of the circuit court of the United States for the district of South Carolina:

And now come William Livingston, C. S. Moseley, and M. Peterman, upon whom has been served an order requiring them to show cause before this honorable court on Monday, the 17th day of May, 1897, at 10 o'clock a. m., or as soon thereafter as counsel can be heard, at Charleston, South Carolina, why the injunction prayed for in the bill in the above-entitled cause should not be granted, — says:

I. That your respondents William Livingston and C. S. Moseley are State constables, duly appointed under the dispensary laws of South Carolina, and engaged in the discharge of the duties of such position at the times mentioned in the bill and are now; that your respondent M. Peterman is one of the police of the city of Charleston, and was duly appointed as such under the Metropolitan police law of the State, and is now and has been engaged in the discharge of the duties of such position.

II. That your respondents know nothing about the matters and things set forth in the bill, except those relating to them as
44 officers charged with the execution of the dispensary law of the State, and they deny that they have seized or threatened to seize any wines or liquors proposed to be shipped by complainants to the State, or that they have done anything or threatened to do anything to enjoin complainants or to break up their trade or business.

They admit that they are pecuniarily irresponsible, as stated in the bill.

C. S. MOSELEY.
WM. LIVINGSTON.
M. PETERMAN.

Sworn to and subscribed before me this 17th day of May, A. D. 1897.

C. P. TOWNSEND, *Not. Pub.* [L. S.]

WM. A. BARBER,
Att'y Gen'l, Att'y for Respondents.

(Filed May 17th, 1897.)

45 *Opinion Granting Temporary Injunction.*

THE UNITED STATES OF AMERICA, }
District of South Carolina. }

In the Circuit Court, Fourth Circuit. In Equity.

THE W. A. VANDERCOOK COMPANY }
vs.
S. W. VANCE, W. N. BAHR, J. M. SCOTT, W. LIVINGSTON, C. S. MOSELEY, M. PETERMANN. }

Any State may in the exercise of the police power declare that the manufacture, sale, barter, and exchange or the use as a beverage of alcoholic liquors are public evils, and, having thus declared, can forbid such manufacture, sale, barter, and exchange or use within her territory.

But when a State recognizes and approves the manufacture, sale, barter, and exchange and the use as a beverage of alcoholic liquors and the State itself encourages the manufacture, engages in the sale of and provides for the consumption of alcoholic liquors as a beverage, and so precludes the idea that such manufacture, sale, barter, exchange, or use are injurious to the public welfare, it is not a lawful exercise of the police power to forbid the importation of such liquors or their sale in original packages for personal use and consumption.

Such prohibition under such circumstances is in conflict with the laws of interstate and foreign commerce.

The dispensary act of 1896, as amended by the act of 1897, inasmuch as they approve the purchase and manufacture of alcoholic liquors for the State and provide for the sale of such alcoholic liquors as a beverage in aid of the finances of the State, in so far as they forbid the importation of alcoholic liquors in original packages for personal use and consumption and the sale of such orig-
46 inal packages for such use in this State, are in conflict with the laws of interstate and foreign commerce and are therefore to that extent void.

47 THE UNITED STATES OF AMERICA, }
District of South Carolina. }

In the Circuit Court, Fourth Circuit. In Equity.

THE W. A. VANDERCOOK COMPANY }
vs.
S. W. VANCE, W. N. BAHR, J. M. SCOTT, W. LIVINGSTON, C. S. MOSELEY, M. PETERMAN. }

This is a bill in equity filed by complainant, a corporation of the State of California, against S. W. Vance, who is State commissioner under the dispensary law, and W. N. Bahr and others, who are State constables appointed to put this law in execution.

The bill alleges that the complainant is the owner of vineyards in the State of California, and that it manufactured from grapes of such vineyards well-known pure wines, brandies, and other liquors, particularly of clarets, Rhine wine, Burgandies, and champagne; that by its travelling agent the complainant took orders from certain citizens and residents of the State of South Carolina to deliver to each of them certain original packages of wines, &c., products of its vineyards, filled said orders, and shipped from San Francisco, in California, to Charleston, South Carolina, by rail, a car-load of its products containing seventy-three separate original packages, for each of its said customers, all marked with its name and address in California, adopting this mode of shipping by car-load in order to obtain a large reduction in freight; that the goods so shipped arrived in Charleston, passing through the hands of several common carriers in continuous route, and thereupon were seized without warrant by defendants Bahr and Scott, and sixty of the packages were shipped by said constables to Columbia to John J. Gaston, then the State
48 commissioner, got into his hands and then into the hands of his successor, S. W. Vance, with full notice of the unlawful seizure, and that Vance, notwithstanding, refuses to deliver them to complainant or its agent after repeated demands, and threatens to convert and sell the same to citizens of South Carolina; that these same constables and others claiming like authority threaten to seize in like manner all wines shipped by complainant into this State, wherever found and for whatever purpose shipped, arriving in said city of Charleston, and in like manner to ship and deliver the same to said S. W. Vance, who likewise threatens to convert the same, to the great damage of complainant and to the obstruction and destruction of its lawful business and interstate commerce and trade in its wines, &c., with citizens and residents of South Carolina. The bill then alleges the shipment of another importation of wines, &c., in separate original packages from its vineyards in California, upon orders from residents of South Carolina, the arrival of the same in South Carolina, and the wrongful seizure of the same by State constables; that other orders have been obtained for other residents of South Carolina for separate original packages, and that upon such order complainant proposes to ship such packages to South Carolina in due course of interstate commerce, and that in the future it intends to seek similar orders and to ship thereupon similar original packages into the State of South Carolina. The bill further alleges that it intends, in the course of its business, further and in addition to such shipments so ordered by customers in advance, to ship also from San Francisco, California, to its agent in the State of South Carolina and to store and warehouse in South Carolina and to sell in the State of South Carolina in the original, unbroken packages, as imported as aforesaid, to residents in South Carolina, its wines and liquors, products of its vineyards, in the due and lawful exercise of its rights under the Constitution and laws of the United States, and that the defendants threaten to seize, take, and carry away, convert, and sell all such shipments. The
49 bill then charges that by the dispensary act of 1897, under which the defendants seek to justify their action, all wines,

beers, ales, alcoholic and other intoxicating liquors are the subjects of lawful manufacture, barter, sale, export, and import in the State of South Carolina and have been and are being and will continue to be lawfully used and consumed as a beverage by citizens and residents of the State of South Carolina, and that the products of its vineyards are lawful subjects of interstate and foreign trade and commerce.

The bill then charges that the said dispensary law, in so far as it authorizes the acts of the defendants, or in any way attempts to abridge the right of importation of the products of complainant's vineyards into this State and there to sell in original packages, or in anywise hinders and prevents its intercourse, commerce, and trade with citizens and residents of South Carolina in the products of its vineyards in such original packages, is in conflict with the Constitution of the United States and is null and void.

The bill then alleges facts sustaining the jurisdiction of this court and securing the jurisdiction of the United States Supreme Court, and prays a temporary to be followed by a permanent injunction.

Upon the filing of the bill a rule was issued against the defendants to show cause why the injunction prayed for in the bill be not granted.

The return sets out three jurisdictional exceptions: First, that the bill presents no question arising under the Constitution and laws of the United States; second, that the bill is defective in its allegations and does not state a case coming within the jurisdiction of this court; third, that the bill presents no case for the jurisdiction of a court of equity, as the plaintiff has a plain, adequate, and complete remedy at law. The bare inspection of the bill shows the objections to be unfounded.

The return then addressed itself to the merits. It sets out clearly that the shipments made by complainant were made by bill of lading to a gentleman in this State, in this behalf selected
50 as the agent of complainant, for distribution of the packages and perhaps the receipt of the purchase-money. It then admits the main facts of the bill and charges that the shipments made by complainants and those contemplated by it and the course of dealing in the future which it intends are in contravention of the act of assembly of 1897, the amendment to the dispensary law, and that under that act and the other acts which it amends the course and action of the State officials were justified and were right and proper.

This case brings up squarely the question, Has a producer of alcoholic liquors in another State the right under the Constitution of the United States, in the present condition of the law of South Carolina, to ship into that State his products in original packages and to sell them in the original packages, either upon orders sent in advance of shipments or upon purchases made after shipment and arrival?

The question is one of grave importance. The very able and exhaustive arguments of counsel on both sides have put the court in possession of every arguments which can be used upon it. They

have received a careful consideration, which they and the question to which they were addressed deserved.

Section 8, article I, of the Constitution of the United States declares: "The Congress shall have power * * * to regulate commerce with foreign nations and among the several States and with the Indian tribes." * * *

The Supreme Court of the United States have now established, by a current of decisions which cannot be misunderstood, that under this section Congress alone has the right to fix, prescribe, and regulate interstate and foreign commerce, and that no one of the States can in any way interfere with such commerce or prescribe any regulation thereof without the consent of Congress. "While by virtue of its jurisdiction over persons and property within its limits a State may provide for the security of the lives, limbs, health, and comfort of persons and the protection of property so situated, yet a subject-matter which has been confided exclusively to
51 Congress by the Constitution is not within the jurisdiction of the police power of the State unless placed there by congressional action." (Henderson *vs.* Mayor of New York, 92 U. S., 259; Rail Road Company *vs.* Husen, 95 U. S., 465; Walling *vs.* Michigan, 116 U. S., 466; Robbins *vs.* Shelby, 120 U. S., 489.)

"Inasmuch as interstate commerce, consisting in the transportation, purchase, sale, and the exchange of commodities, is national in its character and must be governed by a uniform system so long as Congress does not pass any law to regulate it or allows the State to do so, it thereby indicates its will that such commerce shall be free and untrammelled." (County of Mobile *vs.* Kimball, 102 U. S., 691; Brown *vs.* Houston, 114 U. S., 622; Wabash, &c., Railway *vs.* Illinois, 118 U. S., 557.)

The application of this doctrine to the effect of State legislation upon the importation of alcoholic liquors into a State came up for discussion and decision in Leisy *vs.* Hardin, 135 U. S., 100. That case arose under the prohibition laws of Iowa. Section 1523 of the Code of Iowa provided: "No person shall manufacture or sell by himself, clerk, steward, or agent, directly or indirectly, any intoxicating liquors, except as hereinafter provided. And the keeping of intoxicating liquor with intent upon the part of the owner thereof or any person acting under his authority or by his permission, to sell the same within this State, contrary to the provisions of this chapter, is hereby prohibited and the intoxicating liquor so kept, together with the vessels in which it is contained, is declared a nuisance shall be forfeited and dealt with as hereinafter provided."

Chapter 71 of Acts of 1882 of Iowa provided: "That after this act takes effect, no person shall manufacture for sale, sell, keep for sale, give away, exchange, barter or dispense, any intoxicating liquor for any purpose whatever, otherwise than is provided in this act. Persons holding permits as herein provided shall be authorized to sell and dispense intoxicating liquors for pharmaceutical and medicinal purposes, and alcohol for specified chemical pur-

poses, and wine for sacramental purposes, but for no other
52 purposes whatever."

The act then provides for the issue of permits for this purpose by the district court of the county; which permits hold good for one year.

These provisions being in full force, Leisy & Co., brewers, in Peoria, Ill., shipped into Iowa by rail to Keokuk sundry barrels of beer in original packages and sold and offered for sale in Keokuk only in unbroken original packages this beer; thereupon it was seized and held subject to the laws of Iowa above quoted. The cause went up through the several State courts into the Supreme Court of the United States. By that court the case was held under deliberation, and finally the opinion was pronounced by the Chief Justice as the organ of the court. The points to be decided are thus put: "That ardent spirits, distilled liquors, ales, and beer are subject of exchange, barter, and traffic like any other commodity in which a right of traffic exists and are so recognized by the usages of the commercial world, the laws of Congress, and the decisions of the courts is not denied. Being thus articles of commerce, can a State in the absence of legislation on the part of Congress prohibit their importation from abroad or from a sister State or when imported prohibit their sale by the importer?"

In answering these questions, the court goes into a full and elaborate examination of all the authorities. The conclusion is expressed in these words: "The plaintiffs in error are citizens of Illinois, are not pharmacists, and have no permit" (the prerequisites of the Iowa act), "but import beer into Iowa, which they sell in original packages. Under our decision in Bowman *vs.* Chicago, *supra*, they had the right to import the beer into that State, and in the view we have expressed they had the right to sell it, by which act alone it would become mingled in the common mass of property within the State. Up to that point of time we hold that in the absence of congressional permission to do so the State had no power to interfere by seizure or any other action in prohibition of importation or sale by the foreign or non-resident importer."

53 Upon the publication of this opinion the Congress, recognizing its force, enacted the act of August 8th, 1890, commonly known as the Wilson act. That act is in these words:

"That all fermented, distilled, or other intoxicating liquors or liquids transported into any State or Territory or remaining therein for use, consumption, sale or storage therein, shall upon arrival in such State or Territory be subject to the operation and effect of the laws of such State or Territory enacted in the exercise of its police powers, to the same extent and in the same manner as though such liquids or liquors had been produced in such State or Territory and shall not be exempt therefrom by reason of being introduced therein in original packages or otherwise."

The case of Leisy *vs.* Hardin is discussed in Plumly *vs.* Mass., 155 U. S., 642, and in Everett *vs.* Missouri, 156 U. S., 321, in which case also the act of 1890 is mentioned.

The controlling question in the case before us is, How does the

Wilson act affect the South Carolina statute? In the recent case of Scott against Donald, 165 U. S., 58, a case from this circuit under the dispensary law as it stood before the passage of the present act, the Supreme Court discussed the dispensary law and condemned it. They hold that the Wilson act did not protect it.

This case of Donald *vs.* Scott was brought because of the seizure and confiscation of certain alcoholic liquors, products of other States, imported by the plaintiff for his personal use. The conclusion of the Supreme Court, after full discussion of all the cases bearing upon the question, is: "In the light of these cases the act of South Carolina, January 2nd, 1895 (dispensary law), must as to those of its provisions which affect the plaintiff in the present suits *to* be condemned." (165 U. S., 99.)

This act of 1895 was amended in 1896, and when this decision was published the law was further amended in 1897, and this case will turn on these amendments.

Have the amendments cured the objectionable features in the act of 1895? In Scott *vs.* Donald the Supreme Court say of the
54 act of 1895: "It is important to observe that the statute *was* not purport to prohibit either the importation, the manufacture, the sale, or the use of intoxicating liquors. The first section does, indeed, make it penal to manufacture, sell, barter, deliver, store, or keep in possession any spirituous, malt, vinous, fermented, brewed, or other liquors which contain alcohol and are used as a beverage, except as hereinafter provided, and declares all such liquors contraband. * * * Yet these enactments are not absolute, but are made subject to the subsequent provisions of the act. When these provisions *were* examined we find that, so far from the importation, manufacture, and sale of such liquors being prohibited, these operations are turned over to State functionaries, by whom alone or under whose direction they are carried on." The amending act of 1897 contains provisions almost identical in language, exactly identical in effect. The — 1897 amends section 3 of the act of 1895, and still farther amends section- 15 and 23, which had been amended by the act of 1896, removing from these last two sections features of discrimination. But these changes in nowise meet the criticism of the Supreme Court of the act of 1895. This criticism was not on these discriminations only. The court says: "In view of these and similar provisions it is indisputable that, whatever else may be said of this act, it was not intended to prohibit the manufacture, sale, and use of intoxicating liquors. On the contrary, liquors and wines are recognized as commodities which may be lawfully made, bought, and sold, and must therefore be deemed the subject of foreign and interstate commerce." Section 2 provides that the State board of control shall purchase all liquors for sale in this State. Section 3, after providing for the appointment of a commissioner, prescribes how he shall furnish liquors to the county dispensaries for sale. Section 7 provides for county dispensers, who shall sell liquors. Section 15 provides for granting licenses to manufacture liquors. Section 23 provides for a regular quarterly report from all licensed distillers. These sections, in the act of 1897

sustain the criticism of the Supreme Court. It is clear that before the State can forbid the importation and sale in original packages of alcoholic liquors it must declare the manufacture, sale, and
55 use as a beverage of all alcoholic liquors to be contraband and forbidden, and so take them out of the category of legitimate articles of commerce. She cannot for her own purposes treat these liquors as the subject of foreign and interstate commerce and declare them not to be such to the rest of the world.

The appalling statistics of misery, pauperism, and crime which have their origin and owe their existence to the use or abuse of alcoholic spirits are the justification for police regulations with regard to them and placed them under the control of the police power. Considerations of public safety, the supreme law, override every other, and measures, however drastic, which prevent the existence of this evil will be sanctioned and enforced; but when the State herself for her own purposes furnishes to her citizens these alcoholic spirits, encourages them in their use, puts them at convenient places within her territory for the supply and distribution of them, — enters largely in the business, calculating the profit therefrom as aiding State, county, and municipal treasuries, regulations which would — properly attributable to the police power if used in suppression of the traffic, assume the form of measures tending to support the State's monopoly in the business, act as restrictions upon commerce, and infringe the Federal Constitution. If all alcoholic liquors, by whomsoever held, are declared contraband, they cease to belong to commerce and are within the jurisdiction of the police power; but so long as their manufacture, purchase or sale, or their use as a beverage in any form or by any person are recognized they belong to commerce and are without the domain of the police power. The act of 1897, like the act of 1895, is condemned on these principles. Neither of them is within the exercise of the police power.

But whilst it is true that some of the direriminating features are now removed from the dispensary features admitted to be fatal to its constitutionality, one, at least, still remains. The markets of this State are closed to the producers in other States. Minnesota *vs.* Barber, 136 U. S., 326. They are closed, it is true, to the
56 producers in this State; but the latter may be under the control of the laws of commerce within the State. The former are protected by the interstate commerce law. It is no justification that laws in conflict with interstate commerce press equally on the citizens and the stranger. Minnesota *vs.* Barber.

A resident of the State may under the present dispensary law send his orders to a producer outside of the State for liquors for his own personal use and consumption, and a limited importation within a restrictive period and under an absolute condition is allowed such resident. The producer is limited to this. He cannot import his goods into this State in any other way. The condition for thi importation is this: Any resident who desires to import liquor for his own personal use and consumption shall first certify to the chemist of the South Carolina College the quantity and kind of liquor he wishes to import, with the name and address of the per-

son from whom he wishes to purchase, stating also that such proposed purchaser will forward to Columbia, S. C., to said chemist a sample of the liquor. On receipt of the sample the chemist immediately proceeds to test it, and if found to be pure and free from any poisonous, hurtful, or deleterious matter he issues a certificate to that effect, giving names of proposed consignor and consignee and the quantity and kind of liquor to be imported, sends it free of expense and postpaid to the consignor, and the liquor can be shipped within sixty days after the date of the certificate, which can be used once only.

It will be noted that the use of alcoholic liquors as a beverage is not prohibited nor is their importation for personal use forbidden, provided such beverages are free from "poisonous, hurtful, and deleterious matter" other than the alcohol in them.

The act provides the essential and conclusive test on this point—the certificate of the chemist of the South Carolina College. The act also declares all alcoholic liquors not tested by the chemist of the South Carolina College and so found to be free "from poisonous, hurtful, and deleterious matter," necessarily matters other
57 than the alcoholic ingredients, to be of a detrimental character and their use and consumption to be against the morals, good health, and safety of the State—that is to say, without any regard whatever to their real character, the presence or absence of the certificate is the sole test. This can be sustained only on the fact that it is a valid inspection law.

There can be no doubt that a State can enact laws protecting its citizens in the purchase of articles, imported or domestic, from purchasing something they did not intend to buy, or adulterated so as to threaten disease or death (Plumly *vs.* Mass., 155 U. S., 461), but it must be a law which protects or at least tends to protect the citizen. It must give him security. If it does not do so absolutely, still it must contribute to secure him.

The mode of inspection in this act is by sample. Let it be supposed that the sample has been furnished, has been inspected, has been approved, and that the certificate has been sent to the consignor, what sort of assurance does it give the citizen that this liquor he thereupon receives accords with, comes up to, or in anywise resembles the sample? What protection does it give the citizen from fraud from a failure to send liquor according to sample? None whatever. It only subjects him to the seizure and forfeiture of his goods if perchance they should be inspected. The fraudulent seller is out of reach. Upon what, then, must the citizen rely? He can only rely upon the business character, standing, and integrity of the person from whom he buys, without any regard whatever to the inspection.

This so called inspection, furnishing no security to the citizen, cannot thereby be justified. It can operate only as a restriction upon, hindrance and burden to, his acknowledged right to import for personal use. It is thus an interference with interstate commerce and is itself void.

The language in Mugler *vs.* Kansas, 123 U. S., 623, has some

application here. "If a statute purporting to have been enacted to protect the public health, the public morals, or the public
58 safety has no real or substantial relation to those objects, or is a palpable invasion of rights secured by the fundamental law, it is the duty of courts so to abridge them and thereby give effect to the Constitution."

The same mode of inspection by sample would seem to be used in all the liquors issued by the State commissioner. (22 Statutes, 541.)

In Scott *vs.* Donald the supreme court, discussing a similar feature in the act of 1895, says: "To empower a State chemist to pass upon what the law calls 'the alcoholic purity' of such importations by chemical analyses can scarcely come within any definition of a reasonable inspection law." If, then, this mode of inspection be not reasonable and be futile, it is a burden on interstate commerce and in itself makes the provision void. Railroad Co. *vs.* Husen, 95 U. S., 465; Walling *vs.* Michigan, 116 U. S., 446; Minnesota *vs.* Barber, 136 U. S., 313; Brimmer *vs.* Rebman, 138 U. S., 78.

It is manifest, therefore, that the same conclusion must be reached with regard to the dispensary act of 1897 which was reached by the Supreme Court of the United States as to the act of 1895, that it is not within the scope and operation of the Wilson act. This being the case, the law laid down in Leisy *vs.* Hardin controls this case, and the attempt to forbid the importation and sale of spirituous liquors in original packages must fail.

The decision of the Supreme Court of the United States must control all circuit courts. By this decision it is clear that so long as the State herself engages in the business of importing and selling alcoholic liquors for the purposes of profit; so long as she recognizes that the use of alcoholic liquors as a beverage is lawful and can be encouraged; so long as she seeks a monopoly in supplying these liquors for that use, and in this way looks to an increase in her revenue, she cannot, under her constitutional obligations to the other States of this Union, forbid, control, hinder, and burden commerce in such articles between their citizens and her own.

Let a temporary injunction issue as prayed for in the bill.

CHARLES H. SIMONTON,
Circuit Judge.

31 May, 1897.

(Filed May 31, 1897.)

59 *Appearance.*

THE UNITED STATES OF AMERICA,
District of South Carolina.

In the Circuit Court, Fourth Circuit. In Equity.

THE W. A. VANDERCOOK COMPANY, a Corporation Created by and under the Laws of California, Complainants,
vs.
S. W. VANCE, W. N. BAHR, J. M. SCOTT, WM. LIVINGSTON, C. S. Moseley, M. Peterman, Citizens and Residents of the State of South Carolina, Defendants.

To J. E. Hagood, Esqr., clerk of the United States circuit court for the district of South Carolina:

You will please enter the name of the undersigned as solicitor appearing for the defendants in the above-entitled cause, who now formally appears for them and hereby enters his appearance.

WM. A. BARBER,
Attorney Gen'l of S. C., Solicitor for Defendants.

June 3rd. 1897.

(Filed June 3rd, 1897.)

60 *Order for Temporary Injunction.*

THE UNITED STATES OF AMERICA,
District of South Carolina.

In the Circuit Court, Fourth Circuit.

W. A. VANDERCOOK COMPANY, a Corporation Created by and under the Laws of the State of California, Complainant,
against
S. W. VANCE, W. N. BAHR, J. M. SCOTT, W. LIVINGSTON, C. S. MOSELEY, *et al.*, Defendants.

On hearing and filing return of defendants herein to the rule to show cause herein, dated 17 day of May, 1897, why a temporary injunction should not issue against defendants, as prayed in the bill of complaint filed in this court on the 3rd day of May, 1897, and upon motion of Bryan & Bryan, counsel for the complainant, and upon due consideration thereof, after argument by Wm. A. Barber, for defendant-, and J. K. P. Bryan, for complainant—

It is now ordered, adjudged, and decreed that a writ of temporary injunction be awarded and do issue out of this court commanding, enjoining, and restraining the defendants, S. W. Vance, W. N. Bahr, J. M. Scott, W. Livingston, C. S. Moseley, and —— Peterman, claiming to act as State commissioner and State constables under acts of General Assembly of South Carolina of March 6th, 1896, and March

5, 1897, otherwise known as the "dispensary law," from seizing or attempting to seize, in transit or after arrival or otherwise, carrying away, or confiscating or detaining any of the wines and liquors imported or sent into the State of South Carolina by the complainant from its said vineyards, as aforesaid, for the use of the citizens and residents of the State of South Carolina having
61 the mark and stamp of the complainant thereon, to wit, "W. A. Vandercook, Los Angeles, California," and "W. A. Vandercook, San Francisco and Los Angeles, California," or from hindering and preventing the complainant in further importing and sending into the State of South Carolina for such sale and storing and warehousing and selling in original, unbroken packages, as imported in the State of South Carolina, the wines and liquors, products of the vineyards of the complain-t, as aforesaid, for lawful use and consumption of the citizens and residents of the State of South Carolina, and from seizing anywhere within the State of South Carolina any of such wines, as aforesaid, sold in original packages as imported into the State of South Carolina by the complainant to the citizens and residents of South Carolina for their lawful use and consumption, and commanding and enjoining all said defendants from interfering with or hindering and preventing the complainant or any of its agents or servants and officers in any way whatsoever from carrying on interstate commerce and intercourse, as aforesaid, in such wines and spirituous liquors, as aforesaid, with the citizens and residents of the State of South Carolina, secured to them and to the complainant by the laws and Constitution of the United States, or in hindering and preventing in any way any person, citizen, or resident of the State of South Carolina from engaging in such trade, commerce, and intercourse with the complainant or from holding, possessing, using, or consuming the said wines and spirituous liquors sent into the State of South Carolina by the complainant or imported and sold in original packages in the State of South Carolina by the complainant to the citizens and residents of the State of South Carolina.

3rd June, 1897.

CHARLES H. SIMONTON,
Circuit Judge.

(Filed June 3rd, 1897.)

62 *Writ of Temporary Injunction.*

UNITED STATES OF AMERICA,
District of South Carolina.

Circuit Court, Fourth Circuit.

W. A. VANDERCOOK COMPANY, a Corporation Created by and under the Laws of the State of California, Complainant,
against
S. W. VANCE, W. N. BAHR, J. M. SCOTT, W. LIVINGSTON, C. S. MOSELEY, *et al.*, Defendants.

The President of the United States to S. W. Vance, claiming to act as State commissioner, and W. N. Bahr, J. M. Scott, W. Livingston and C. M. Moseley, *et al.*, claiming to act as State constables under the act of the General Assembly of South Carolina approved March 6, 1896, and March 5, 1897, otherwise known as the "dispensary law:"

Whereas in the above-entitled cause, now pending in said United States circuit court in and for the district of South Carolina, upon application duly made to the Honorable Charles H. Simonton, a circuit judge of the United States for the fourth judicial circuit of the United States, it was, on the 3rd day of June, 1897, ordered, adjudged, and decreed that a writ of injunction issue as therein prayed for in the bill of complaint herein filed and as directed in said order and decree:

Now, know ye that you, S. W. Vance, claiming to act as State commissioner, and W. N. Bahr, J. M. Scott, W. Livingston and C. M. Moseley, *et al.*, claiming to act as State constables, under the act of the General Assembly of South Carolina approved March 6, 1896, and March 5, 1897, otherwise known as the "dispensary law," your agents, servants, and attorneys, and each of you, are hereby strictly commanded, restrained, and enjoined from seizing or attempting to seize, in transit or after arrival or otherwise, carrying away, or confiscating or detaining any of the wines and liquors imported or sent into the State of South Carolina by the complainant from its said vineyards, as aforesaid, for the use of the citizens and residents of the State of South Carolina having the mark and stamp of the complainant thereon, to wit, "W. A. Vandercook, Los Angeles, California," and "W. A. Vandercook, San Francisco and Los Angeles, California," or from hindering and preventing the complainant in further importing and sending into the State of South Carolina for such sale and storing and warehousing and selling in original, unbroken packages, as imported in the State of South Carolina, the wines and liquors, products of the vineyards of the complainants, as aforesaid, for lawful use and consumption of the citizens and residents of the State of
63 South Carolina, and from seizing anywhere within the State of South Carolina any of such wines, as aforesaid, sold in

original packages as imported into the State of South Carolina by the complainant to the citizens and residents of South Carolina for their lawful use and consumption, and from interfering with or hindering and preventing the complainant or any of its agents or servants and officers in any way whatsoever from carrying on interstate commerce and intercourse, as aforesaid, in such wines and spirituous liquors, as aforesaid, with the citizens and residents of the State of South Carolina, secured to them and to the complainant by the laws and Constitution of the United States, or in hindering and preventing in any way any person, citizen, or resident of the State of South Carolina from engaging in such trade, commerce, and intercourse with the complainant or from holding, possessing, using, or consuming the said wines, spirituous liquors, sent into the State of South Carolina by the complainant or imported and sold in original packages in the State of South Carolina by the complainant to the citizens and residents of the State of South Carolina.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 5th day of June, 1897, and seal of said circuit court of the United States in and for the district of South Carolina.

[Seal U. S. Circuit Court, District of So. Carolina.]

J. E. HAGOOD,
C. C. C. U. S., Dist. S. C.

BRYAN & BRYAN,
Complainant's Solicitors.

(Filed June 7th, 1897.)

64 *Marshal's Return of Service.*

Paul Moore, office deputy U. S. marshal, being duly sworn, says that he served the within writ personally on W. N. Bahr at Charleston on June 8, 1897; that on June 18th he served said writ personally on J. Scott and C. S. Moesley in Charleston, S. C.

PAUL MOORE,
Office Deputy U. S. Marshal.

Sworn to before me June 18, 1897.

RICHARD W. HUTSON,
Dep. C. D. C. U. S., S. C.

UNITED STATES OF AMERICA, }
District of South Carolina. }

John T. Thornton, deputy marshal, sworn, says he served the within order on S. W. Vance personally at his place of business, in Columbia, S. C., by delivering to him personally a copy thereof, at the same time exhibiting to him this original, on this 9th day of June, 1897, and he knows S. W. Vance to be the defendant named herein, and deponent is not a party to this action.

J. T. THORNTON,
Deputy Marshal.

Subscribed and sworn to before me this 9th day of June, 1897.
JOHN BAUSKETT, *U. S. Com'r.* [L. S.]

65 *Answer of S. W. Vance.*

UNITED STATES OF AMERICA, }
District of South Carolina. }

In the Circuit Court, Fourth Circuit. In Equity.

W. A. VANDERCOOK COMPANY, a Corporation Created by and under the Laws of California, Complainants,
vs.
S. W. VANCE, W. N. BAHR, and J. M. SCOTT, WM. LIVINGSTON, C. S. Moseley, M. Peterman, Citizens and Residents of the State of South Carolina, Defendants.

To the honorable the circuit judges of the United States:

The defendant S. W. Vance, now and at all times hereafter saving and reserving to himself all manner of benefit, advantage, or exception that can or may be had or taken to the many issues, uncertainties, and imperfections in the said bill contained, for answer thereto or to so much thereof as this defendant is advised it is material for him to make answer to, answering, he submits to this honorable court that the complainant has not in *his* bill shown any case in e-uity or case entitling *him* to proceed against him in this honorable court, and prays all such benefit as if he had demurred to the bill, and he further interposes a plea to the jurisdiction of the court:

I. Because the bill presents no question arising under the Constitution or laws of the United States.

II. Because the bill presents no case upon which the jurisdiction of a court of equity can be founded, as there are plain and adequate remedies at law for the conviticon of any of the matters and things alleged in the bill.

66 III. Because the complainant has not in and by *his* said bill made or stated a case to entitle *him* in a court of equity to any relief against the defendants or either of them as to the matters contained in the said bill or any of them.

And this defendant, further answering, says if the court has jurisdiction:

I. He has no knowledge or information sufficient to form a belief as to the matters and things set forth in the 1st, 3rd, 4th, 7th, 8th, 9th, 10th, 11th, and 12th paragraphs of the bill.

II. He admits the second paragraph of the bill.

III. That as to the matters and things set forth in the 5th and 6th paragraphs of the bill he knows nothing except that certain packages of wine and liquors were shipped to him as State commissioner by the State constable, J. M. Scott, from Charleston, S. C., on the 19th day of April, 1897, and which were received by him as such commissioner in due course of transportation, the bill of

lading for which is hereto attached and made a part of this return; that he received sixty packages, as shown in said bill of lading, and deposited them in the State dispensary, where they now are; that he received from Constable Bahr an appraisement of the said packages and contents, made by S. J. J. Browning, Wm. J. Schneider, and L. S. Byrd, on the 19th day of April, 1897, and sworn to by them, a copy of which original paper is hereto attached as a part of this return; that he did receive three telegrams from Bryan & Bryan, purporting to be attorneys for owners of said packages, in relation to the same, of about the purport stated in the fifth paragraph of the bill, and also received one letter from the said attorneys of about the same purport, and that he replied to said messages and letter and did refuse to return the said packages because he believed and was advised that as State commissioner he could
67 not return them for the reason that they had been lawfully seized by the State constables and came rightfully and legally in his possession; that he is advised that the dispensary law of South Carolina approved March 6, 1896, and as amended March 6, 1897, under which the said packages were seized and are now held by him as State commissioner, is an act in the lawful exercise of the police power of the State and is not in conflict with the Constitution of the United States and the acts of Congress; that he denies that he is financially irresponsible, as charged in the bill, and also according to the best of his information that the complainant has or will be damaged ten thousand dollars.

Defendant further says he denies he is threatening, as State commissioner or otherwise, to convert and sell the said sixty packages to the wrongful harm and injury of the complainants, but repeats that he is still holding them as a State officer charged with specific duties and not with any intent to hinder or obstruct interstate commerce or to injure the plaintiff in any way, and submits that this honorable court has no jurisdiction to interfere by way of injunction with his duties as State commissioner duly appointed and commissioned under the dispensary law; has given the official bond required, and is now and has been since the 15th day of April, 1897, engaged in discharging the duties of his said office.

WM. A. BARBER,
Att'y Gen'l, Sol'r for Def't.

68 UNITED STATES OF AMERICA, }
District of South Carolina. }

Personally appeared before me S. W. Vance, defendant, who, after being duly sworn, says that the foregoing answer is true of his own knowledge.

S. W. VANCE.

Sworn to and subscribed before me this 5th day of June, A. D. 1897.

C. P. TOWNSEND, *Not. Pub.* [L. S.]

(Filed June 8th, 1897.)

69 South Carolina State Dispensary.

STATE OF SOUTH CAROLINA, }
Charleston County. }

Contraband Liquors Seized under Act of December 23rd, 1893, Known as the Dispensary Law, and Appraised for Confiscation.

2 cases champagne, 12 pints each,	valued at	$18.00	per case..	$36 00
1 case brandy,	" " "	4.80	" ..	4 80
14 " wine,	" " "	2.40	..	33 60
1 5-gal. keg Angelica wine,	"	1.00	per gal...	5 00
1 5- " Catawba wine, each,	"	1.00	" ..	5 00
8 gals. of claret, XXX,	"	1.00	" ..	40 00
1 gal. J. B. wine,	"	1.00	" ..	5 00
2 10-gal. kegs claret, XXX,	"	1.00	" ..	20 00
6 5-gal. — port, XX,	"	1.00	" ..	30 00
2 10-gal. kegs port, XX,	"	1.00	" ..	20 00
4 5-gal. kegs Sheny, XX,	"	1.00	" ..	20 00
7 5-gal. kegs Sheny,	"	1.00	" ..	10 00
1 10-gal. keg Sheny, XXX,	"	1.00	" ..	10 00
1 10-gal. keg Sheny, V,	"	1.00	" ..	10 00
1 10-gal. keg Sheny, XX,	"	1.00	" ..	10 00
6 5-gal. kegs grape brandy,	"	2.00	" ..	60 00
1 10-gal. keg grape brandy,	"	2.00	" ..	20 00
1 5-gal. keg grape brandy, XX,	"	2.00	" ..	10 00
1 5 gal. keg grape brandy, XXX,	"	2.00	" ..	10 00
2 5-gal. keg- J. V.,	"	2.00	" ..	20 00
1 5-gal. keg rock,	"	2.00	" ..	10 00
1 half barrel Sheny wine, 27½ gal.,	"	.80	" ..	22 00

70 We, the undersigned, citizens of the State and county aforesaid, duly appointed as appraisers in the above case, on oath do say that the above-described whiskies, wines, etc., are —, and we value the same at, four hundred and eleven dollars and forty cents.

S. J. J. BROWNING.
WM. SCHNEIDER.
L. G. BYRD.

Sworn to before me this 19th day of April, 1897.

JOHN WOHLTMAN, *Not. Pub.*

(Filed June 8th, 1897.)

71 *Answer of Defendants Wm. Livingston, C. S. Moseley, and M. Peterman.*

UNITED STATES OF AMERICA,
District of South Carolina.

In the Circuit Court, Fourth Circuit. In Equity.

W. A. VANDERCOOK COMPANY, a Corporation Created by and under the Laws of California, Complainants,
vs.
S. W. VANCE, W. N. BAHR, and J. M. SCOTT, WM. LIVINGSTON, C. S. Moseley, M. Peterman, Citizens and Residents of the State of South Carolina, Defendants.

To the honorable the circuit judges of the United States:

The defendants C. S. Moseley, Wm. Livingston, and M. Peterman, reserving to themselves all benefit of exception or advantage that can or may be had or taken to the said bill, for answer thereto say:

I. That the defendants Wm. Livingston and C. S. Moseley are State constables, duly appointed under the dispensary law of South Carolina, and were engaged in the discharge of their duties as such at the times mentioned in the bill and are now so engaged; that M. Peterman is one of the police of the city of Charleston, and was duly appointed as such under the Metropolitan police law of the State and is now and has been for more than one year past engaged in the discharge of the duties of such position.

II. That the defendants know nothing about the matters and things set forth in the bill, except those relating to them as officers charged with the execution of the dispensary law of the State, and they deny that they have seized or threatened to seize any
72 wines or liquors proposed to be shipped by the complainant to the State, or that they have done anything or threatened to do anything to injure complainant or to break up its trade or business.

III. They admit that they are pecuniarily irresponsible, as stated in the bill, and say that they are advised that the act of the General Assembly of the State of South Carolina known as the dispensary law, approved March 6, 1896, and amended in March, 1897, authorizes them to seize all contraband liquors, and that said act is the lawful exercise of the police power of the State and is not in conflict with the Constitution of the United States and the laws of Congress.

Wherefore the defendants humbly pray to be herein dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

WM. A. BARBER,
Att'y Gen'l, Defendants' Solicitor.

UNITED STATES OF AMERICA,
District of South Carolina.

Personally appeared before me Wm. Livingston, C. S. Moseley, and M. Peterman, who, after being respectively and duly sworn, say that the foregoing answer is true of their own knowledge.

WM. LIVINGSTON.
C. S. MOSELEY.
M. PETERMANN.

Sworn to and subscribed before me this 7th day of June, A. D. 1897.

W. P. GAILLARD, [L. S.]
Notary Public, S. C.

(Filed June 8th, 1897.)

73 *Answer of Defendants W. N. Bahr and J. M. Scott.*

UNITED STATES OF AMERICA,
District of South Carolina.

In the Circuit Court, Fourth Circuit. In Equity.

W. A. VANDERCOOK COMPANY, a Corporation Created by and under the Laws of California, Complainants,
vs.
S. W. VANCE, W. N. BAHR, and J. M. SCOTT, WM. LIVINGSTON, C. S. Moseley, M. Peterman, Citizens and Residents of the State of South Carolina, Defendants.

To the honorable the circuit judges of the United States:

These defendants W. N. Bahr and J. M. Scott, now and at all times hereafter saving and reserving to themselves all manner of benifit or advantage of exception that can or may be had or taken to the many errors, uncertainties, and imperfections in the said bill contained, for answer thereto, or to so much thereof as these defendants are advised it is material or necessary for them to make answer, answering, submit to this honorable court that the complainant has not in *his* bill shown any case in equity or case entitling it to proceed against them in this honorable court, and pray all such benefit as if they had demurred to the bill; and they further interpose a plea to the jurisdiction of the court:

I. Because the bill presents no question arising under the Constitution and laws of the United States to give jurisdiction to this honorable court.

74 II. Because the bill is defective in its allegations and does not state a case coming within the jurisdiction of this court.

III. Because the bill presents no case upon which the jurisdiction of a court of equity can be founded, as there are plain and adequate remedies at law for the correction and redress of the matter and things alleged.

And the defendants, further answering, say if the court has jurisdiction—

That as to the matters and things set forth in the first paragraph of this bill they have no knowledge or information sufficient to form a belief and demand proof of same.

II. That they admit the allegation of the 2nd paragraph of the bill.

III. That as to the matters and things set forth in the third paragraph of the bill they have no information or knowledge sufficient to form a belief and demand proof of same.

IV. That as to the allegations of the 4th paragraph of the bill they have no knowledge or information sufficient to form a belief, except as to those relating to the arrival of seventy-three packages of wine and brandies in Charleston, S. C., about the time therein stated, and they say that the said packages were in one car, and on the waybill all the wines and brandies were consigned to J. C. Simonds, cashier of one of the national banks of said city, and each package was marked J. C. Simonds, and none of them had the certificate of the State chemist showing the wines and brandies had been analyzed, as required by law.

As to the matters and things set forth in the 5th paragraph, they admit, on or about the 15th day of April, A. D. 1897, the car-load of wines and brandies mentioned in said paragraph did arrive at Charleston, S. C., its point of destination, over the South Carolina and Georgia railroad, and that your defendants, as State
75 constables, did hold up seventy-three packages of wine and liquors in the depot of said railroad for investigation under the provisions of the dispensary law of South Carolina, and that said packages had arrived in a car, but had been unloaded, and the waybill in the possession of the agent of the said railroad was examined and showed that the entire car-load had been consigned to J. C. Simonds, cashier of First National bank, and each package was marked in his name; that after holding up said wines and brandies defendant Bahr made inquiry and investigation into the matter, and on the 18th day of April, A. D. 1897, he received through a telegram a message from Messrs. Buist & Buist that they desired to see him at their office, and he immediately went there and found Mr. Henry Buist and J. C. Simonds in the office, and after some conversation he turned over to J. C. Simonds, cashier First National bank, the party to whom the packages had been consigned, the seventy-three packages of wine and brandies held up at the depot of the South Carolina and Georgia railroad, and at the same time telephoned from the said office to the agent of the railroad and notified him that he had so turned over to J. C. Simonds the said packages, and asked him to so inform Constable J. M. Scott, who had held them up; that he received a letter from J. H. Vaughn, said agent of the railroad, that the goods consigned to J. C. Simonds had been delivered to him and bill of lading had been surrendered by him, as will appear from said letter hereto attached as Exhibit "A;" that defendant Bahr, after so releasing and turning over to J. C. Simonds the said packages, saw J. M. Scott, his codefendant, and was

informed by him that the railroad agent was delivering the wines and brandies on order of J. C. Simonds, when he immediately went to the depot and found that several parties had received packages and had removed them from the depot on orders of J. C. Simonds on payment
of the invoice price of same to him; that after learning these
76 facts he again seized the remaining packages left in the depot on
the 17th day of April, 1897, had the same appraised, marked, and shipped to S. W. Vance, State commissioner, Columbia, S. C., who now has the possession of the same, and a copy of said appraisement, showing the number of packages seized and value of same, is hereto attached as a part of this return; that after the seizure of said packages several citizens of Charleston, to whom invoices of some of said wines and brandies had been sent, came to defendant Bahr and asked him to endorse the invoices so that they could get the packages from the depot; to all of whom he replied that he had held up nothing in their names, and had no authority to indorse the invoices, as all the liquor seized was marked and consigned to J. C. Simonds, and that the railroad agent would not recognize any orders for delivery of same except from J. C. Simonds; that Mr. A. W. Petit, who held one of these invoices and also a notice from J. C. Simonds, cashier, gave to defendant Bahr the originals, which are hereto attached as a part of this return, and that two other parties, D. Rhode and C. Schmanke, also had invoices sent to them through the mail by the complainant, which they gave to him, and they are herewith exhibited; that defendant Bahr saw in the possession of Dr. Buist the notice sent to him by J. C. Simonds and the receipt for the money paid to him when order was given on railroad agent for his package.

V. They further say that R. R. Turner, the agent of the complainant, while soliciting orders in Charleston, S. C., for these wines and brandies, came to his house and stated to him that he had sold a car-load to different parties in the city and intended to ship them in a car-load lot to J. C. Simonds; wherefore defendant advised him not to ship such wines and brandies in one man's name, but to make each individual package separate, and to send to each a bill of lading. Turner then remarked that he had been shipping to
77 one man before as he proposed to ship to J. C. Simonds and
had never been molested, and he intended to do so again; that it was about three weeks after this conversation before the car-load arrived and was unloaded in the depot; that since the seizure of sixty packages, to wit, on the 16th day of April, 1897, he did hold up four packages of wine shipped and consigned to E. L. Tessier, Charleston, S. C., at the depot of the South Carolina & Georgia railroad, but released the same after investigation; that subsequently to this he did seize, on the 29th day of April, 1897, eight packages of wine and brandies consigned by the complainant to J. C. Simonds, shipped into Charleston over the South Carolina & Georgia railroad; which said packages Mr. Simonds refused to accept or have anything to do with, and R. R. Turner, the agent of the complainant, made efforts to sell the said packages to parties in Charleston; that upon receiving this information from parties to whom he made effort to

sell he then went before R. R. Gilchrist, a magistrate, and took out a warrant and seized said eight packages under same, which were shipped to S. W. Vance, State commissioner, Columbia, S. C.; and defendants deny that the seizure of said sixty packages or the eight packages mentioned herein was unlawful, and they submit that under the dispensary act approved March 6, 1896, amended by act approved March 26, 1897, they had authority to seize and hold the same, a copy of which said acts is hereto attached.

VI. That as to the matters and things set forth in the sixth paragraph of the bill your defendants say that W. N. Bahr is one of the chief State constables, and that J. M. Scott, Wm. Livingston, and C. S. Moseley are State constables; that M. Peterman is one of the policemen of the city of Charleston, and S. W. Vance is State commissioner. They deny that they are threatening or have threatened all the wines to be shipped into the State by the complainant.

78 VII. That as to the matters and things stated in the seventh paragraph of the bill they have already fully answered, as they have stated that four packages were shipped to E. L. Tesssier and seized, but were returned to him, and that eight other packages have been seized consigned to J. C. Simonds and are still held, and did not seize nineteen packages, as therein stated; and they deny that they unlawfully seized said packages, but submit they had the authority to do so under the dispensary act, approved March 6, 1896, and as amended March 26, 1897, and also deny that the complainant has or will be damaged ten thousand dollars.

VIII. They know nothing about the intention of the complainant as to shipment of wines and brandies into the State from their vineyards, but deny that they have threatened to seize, take away, detain, convert, and sell any packages so to be imported by them, to the injury and damage of their trade and business.

IX. Defendants deny all the matters set forth in the ninth paragraph except those relating to letters written to them by the attorneys for the complainant, and they admit they did receive two letters—one on the 17th day of April, 1897, before the seizure of the car-load, and one afterwards—of about the import stated, but they deny that they threatened to continue to seize liquors and to break up the lawful trade, commerce, and intercourse of trade.

X. Defendants deny the matters and things charged in the bill.

XI. They deny all the matters and things set forth in the eleventh paragraph except that charging that they are pecuniarily irresponsible, and this they admit.

XII. They deny the allegations set forth in the twelfth paragraph, and submit, as they are advised, that the complainant has the adequate remedy of the law. Your defendants show that

79 from all the facts herein stated, which can be fully established, the car-load of wine and brandies was delivered to J. C. Simonds by the railroad company, and when so delivered he acquired title to the same, and the complainant cannot maintain the above; it is not the real party in interest.

And these defendants deny all and all manner of unlawful combination and confederacy wherewith they are charged in the bill,

and they say they have made answer to matters in said bill contained which they are advised are material and necessary for them to make answer to, and as to such matters as are traversed and denied they are willing to aver, maintain, and prove as this honorable court shall direct.

And they humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

WM. A. BARBER,
Att'y Gen'l, Defendants' Sol'r

UNITED STATES OF AMERICA, }
District of South Carolina. }

Personally appeared before me W. N. Bahr and J. M. Scott, defendants, who, after being respectively and duly sworn, say—

That the foregoing answer is true of their own knowledge.

W. N. BAHR.
J. M. SCOTT.

Sworn to and subscribed before me this 9th day of June, A. D. 1897.

[SEAL.]

J. E. HAGOOD,
C. C. C. U. S., Dist. S. C.

(Filed June 9th, 1897.)

(Exhibits to this bill are originals attached to response to rule in this case.)

80 *Replication.*

THE UNITED STATES OF AMERICA, }
District of South Carolina. }

In the Circuit Court, Fourth Circuit. In Equity.

W. A. VANDERCOOK COMPANY, a Corporation Created by and under the Laws of the State of California, Complainants,
vs.
S. W. VANCE, W. N. BAHR, J. M. SCOTT, W. LIVINGSTON, C. S. MOSELEY, and M. PETERMAN.

The replication of the complainant in above cause to the answers of the defendants.

This repliant, saving and reserving all advantage of exception to the manifold insufficiences of said answers, for replication thereto saith that it will aver and prove its said bill to be true and sufficient, and that the said answer is untrue and insufficient; wherefore *he* prays relief as in said bill set forth.

Charleston, July 5, 1897.

BRYAN & BRYAN,
Complainant's Solicitors.

(Filed July 5th, 1897.)

81 *Final Decree.*

THE UNITED STATES OF AMERICA,
District of South Carolina.

In the Circuit Court, Fourth Circuit. In Equity.

THE W. A. VANDERCOOK COMPANY, a Corporation Created by and under the Laws of the State of California, a Citizen and Resident of the State of California, Complainant,

vs.

S. W. VANCE, W. N. BAHR, J. M. SCOTT, W. LIVINGSTON, C. S. MOSELEY, and M. PETERMAN, Defendants.

This cause coming on to be heard on the pleadings and proofs annexed, and after argument of counsel for respective parties and after due consideration thereof—

Is is now ordered, adjudged, and decreed that the interlocutory injunction and decree hereinbefore decreed by this court, dated the 3rd day of June, 1897, be made permanent and do stand as the decree of this court.

It is also further ordered that the complainants, inasmuch as they have since filing of the original bill established, as therein alleged, agencies within the State of South Carolina for warehousing, storing, and selling their wines, &c., products of their California vineyards, in original, unbroken packages, as imported, must conform to all lawful police regulations of the State, to wit, may
82 only sell the same within the legal hours, in the daytime, and not to be opened or drunk on their premises, and not to be sold to minors or drunkards, and not to be sold in cities or places where all sale of intoxicating liquor by State dispenser or otherwise is prohibited by law of the State, and not to be sold to any one on Sunday.

CHARLES H. SIMONTON,
Circuit Judge.

19th Nov., 1897.
(Filed Nov. 18th, 1897.)

83 *Evidence.*

The deposition of R. R. TURNER, on behalf of plaintiff, is as follows:

I am travelling agent of The Vandercook Co., plaintiff (a resident and citizen of Virginia).

The plaintiff is a corporation created under the laws of the State of California and are proprietors and owners of a number of vineyards in the State of California, known as "San Gabriel," "Santa Clara," "Fresna," and "Napa" valleys, and producers of wines and brandies from the grapes.

In the months of February and March, 1897, as such travelling agent, I took the orders of a number of residents of Charleston, South Carolina, for purchase of certain packages of wines and

brandies, products of plaintiff's vineyards, set forth particularly in the complaint and exhibits, and in pursuance of such orders the W. A. Vandercook Co., on the 20th day of March, 1897, shipped the same from San Francisco, consigned to their agent, J. Simonds, cashier First National bank, at Charleston, South Carolina, in seventy-three separate original packages, each package to be delivered by its agent or person ordering same, and making a car-load lot, of the value of twelve hundred dollars. This car-load of wines arrived in Charleston on 16th April, 1897, and while in depot of South Carolina and Georgia Railroad Company, at Charleston, were seized by defendants W. N. Bahr and J. M. Scott, without warrant, and delivery of the same were stopped. Sixty packages, of the value of eight hundred dollars, as set forth in Exhibit "B," were taken away from the depot by defendants and shipped to defendant S. W. Vance, at Columbia, claiming to act as "commissioner," who received same about 22nd April, 1897, with full notice of the
84 trespass as above.

And on the 29th April, 1897, the defendants Bahr and Scott seized at said railroad depot, at Charleston, S. C., eight other original, unbroken packages of wines and brandies, as set forth in Exhibit "C" of the complaint, of the value of two hundred dollars, products of plaintiff's vineyards, and shipped by plaintiff to Charleston, S. C., to its agent on like orders of its customers for delivery to them, and the same were sent to Columbia, S. C., to S. W. Vance, defendant, who received them with full notice of the trespass; that after repeated demand and warning the said S. W. Vance and other defendants refused to return any of said packages; that said seizure and detention were wilfully, knowingly, and maliciously done and continued; that defendants were notified by Bryan & Bryan, counsel for W. A. Vandercook Co., as follows:

85 *Letter.*

APRIL 17, 1897.

Mr. W. N. Bahr (individually), Charleston, S. C.

DEAR SIR: We are informed by the public press that yesterday, claiming to act as a State constable, you entered the South Carolina & Georgia Railroad station, Charleston, S. C., and seized a number of packages of wines and liquors then in said depot and in due course of transportation from the W. A. Vandercook Co., California, to their several consignees marked thereon, Charleston, S. C.

You were notified by the label on said packages that you were violating the law, and we again give you notice that such action on your part was a wanton, gross, and defiant trespass and outrage for which you are liable, both criminally and in civil suits, for compensatory, punitive, and vindictive damages, and we demand that you forthwith release all such unlawful stoppage that you have attempted to make and further desist from these unlawful restraints of interstate trade and commerce, well known to you as a gross violation of rights of our clients under the Constitution of the United States.

Yours respectfully, BRYAN & BRYAN.

Telegram.

CHARLESTON, *April* 21, 1897.

S. W. Vance, Columbia, S. C.:

We demand immediate return of sixty packages wines and liquors marked J. S. Charleston wrongfully seized by one J. M. Scott at South Carolina & Georgia Railroad depot here Monday nine-
86 teenth April and shipped to John Gaston Columbia by North Eastern railroad same day. We notify you of his malicious trespass and your participation in his malicious trespass if you receive or detain these goods.

Awaiting your reply by telegram.

BRYAN & BRYAN,
Att'ys for Owner.

Letter.

APRIL 21, 1897.

S. W. Vance, Esq., Columbia, S. C.

DEAR SIR: We beg to say that we have telegraphed you this day as follows:

CHARLESTON, *April* 21, 1897.

S. W. Vance, Columbia, S. C.:

We demand immediate return of sixty packages wines and liquors marked J. S. Charleston wrongfully seized by one J. M. Scott at South Carolina & Georgia Railroad depot here Monday nineteenth April and shipped to John Gaston Columbia by North Eastern railroad same day. We notify you of his malicious trespass and your participation in his malicious trespass if you receive or detain these goods.

Awaiting your reply by telegram.

BRYAN & BRYAN,
Att'ys for Owner.

We beg to repeat this notice to you, requesting an immediate answer.

Yours respectfully, BRYAN & BRYAN.

P. S.—We beg to say that we write this letter to you in your individual capacity and notify you that any State law under which you claim to act or under which J. M. Scott claims to act is absolutely null and void under the Constitution of the United States, as
87 you are well aware, and is no shield or shelter for his or your wrong-doing.

Yours respectfully, BRYAN & BRYAN.

Letter.

APRIL 23, 1897.

S. W. Vance, Esq., Columbia, S. C.

DEAR SIR: We have your telegram this day in reply to our previous demands, as follows:

"The wines and liquors seized by Constable Scott have reached me and I respectfully refuse to return the same as requested by you."

We beg again to notify you of your malicious and defiant conduct in detaining these goods and warn you that your action is without any lawful authority, and that you will be held responsible therefor by all the pains, punishments, and penalities known to the law for redress of our clients and protection of their rights under the Constitution of the United States.

We demand again return of these goods instantly, and notify you again that the law requires us to deal with you individually and personally, as you have no shadow of legal excuse and cannot shelter yourself behind any advice or direction of any official, whoever he may be.

Very respectfully, BRYAN & BRYAN.

88 *Letter.*

APRIL 28, 1897.

S. W. Vance, Esq., Columbia, S. C.

DEAR SIR: We beg to acknowledge receipt this day of a letter of 25th inst., signed by yourself, S. W. Vance, but to which you have added the word "commissioner."

We beg to refer you to our former letters and telegrams to yourself, in which we have addressed you in your individual and private capacity, and have not had and do not expect to have any communication with you in this matter as a commissioner—that is, as a State official acting under any valid law of the State of South Carolina.

We have notified you that any law under which you claim to act in receiving and detaining these packages of wine, after our notice to you in advance, is unconstitutional, null, and void under the Constitution of the United States, which is the paramount and supreme law of this land.

You therefore, we have told you, had no official sanction or warrant for your participation in the malicious trespass of J. M. Scott, well known to you to be a malicious trespass, because we have distinctly notified you and warned you in advance as to your participation in the same.

We beg now to repeat our notice to you that your conduct in retaining these packages is both malicious and defiant—malicious in that you are consciously violating the property rights of our clients, breaking up their business and attempting to deter
89 them in future from exercise of their legal rights and lawful business; defiant in that you wilfully oppose the known law declared in principle by the Supreme Court of the United States after repeated warning from ourselves.

We beg to further notify you that we shall hold you responsible for this continued wrong-doing by all the processes known to the law for the vindication and protection and redress of the rights of our clients and the prevention of your wrong-doing in the future.

We beg further to say to you that this matter has no personal aspect. It is a matter of public law, binding upon all the citizens of this country, and of the common right and privilege of all the citizens of this country, and no one can give you power to be above

the law, and your attempt to do so is gross oppression and monstrous to the citizen and his right guarantied by the Constitution of the United States.

We again demand of you the delivery of possession of these sixty packages of wines, etc., and upon refusal we beg to repeat our notices and warnings to you.

Yours respectfully, BRYAN & BRYAN.

I myself also gave repeated personal verbal notices to defendants W. N. Bahr and J. M. Scott of their wrong-doing, and demanded return of the packages by them.

That, notwithstanding said notices, the defendant seized and detained said packages of wine, and same was done after full notice, as aforesaid, and with intent to oppress, humiliate, and intimidate plaintiff and make example of plaintiff and deter it and
90 others from exercising their right, privilege, and immunities of interstate trade, commerce, and intercourse with citizens and residents of South Carolina in the products of its vineyards, secured to them under Constitution and laws of the United States, and with intent to break up the plaintiff's lawful interstate trade and commerce in said products.

The plaintiff was greatly injured in its business and trade by such seizure and detention of its vine products and lost for two months its trade and business with the citizens and residents of South Carolina; that the plaintiff's actual loss thereby exceeds twelve hundred dollars.

Before, during, and after these seizures intoxicating liquors—*inter alia*, whiskey, beer, wine, and brandy—were being manufactured in the State of South Carolina. The distilleries, breweries, and vineyards were producing spirituous liquors, wine, and beer within the State, and the same was used as a beverege in the State and sold within the State by State agents, known as dispensers, at State liquor shops, known as dispensaries, under the provisions of the so-called State liquor dispensary law (act 1896–1897), and such liquor products of the State of South Carolina were being exported to other States by its citizens from the State. Same liquors, products of other States, were being imported by the State board of control from other States and sold by dispensers in broken packages and unbroken original packages. The imports consisted wholly of such products of other State or States as the board of control chose to import. No products of the Vandercook vineyards have ever been imported by the board of control or at any time offered for sale in State liquor dispensaries in South Carolina.

The United States Government has issued, upon applica-
91 tion, licenses for wholesale and retail liquor dealers, under the Revised Statutes of the United States, sec. —, to the State liquor dispensaries throughout the State of South Carolina, and usual license fees have been paid by the State.

Deposition of W. A. Vandercook, President of the Plaintiff Company, on Behalf of Plaintiff.

Since the interlocutory injunction filed in the case on — day of ——, 1897, the W. A. Vandercook Company have established in the cities of Charleston, Columbia, and Greenville and other cities agencies for the storing, warehousing, and selling in original, unbroken packages, as imported wines, &c., products of their California vineyards. The same have not been at any time sold in any town or city where, by the law of the State of South Carolina, all sale of intoxicating liquors by the State dispenser or otherwise is prohibited, and the same are sold in original, unbroken packages as imported and not sold to minors or drunkards, not sold to be drunk on the premises or opened on the premises, are sold in the daytime within the legal hours of sale.

We have been and are willing to have the products of our vineyards inspected by the State of South Carolina under any lawful and reasonable system of inspection. The law of the State denies us inspection and sale of our goods in original packages in the State. There has been no demand upon us at any time by any officer of the State for inspection of our goods sold in our agencies in original packages as imported into the State.

The plaintiff, The W. A. Vandercook Co., is a corporation created by and under the laws of the State of California.

92 Deposition of W. N. BAHR, defendant, on behalf of defendant-, is as follows:

All the defendants were State constables duly appointed and commissioned under the act of the General Assembly of South Carolina known as the dispensary law, approved March 6th, 1896, amended March 5th, 1897, and acted as such constables at the time of the seizure and made the seizures under said acts.

That none of the wines and liquors imported into the State by plaintiff were inspected as required by the provision of the amendment of 1897 to the dispensary law, 1897, and none of them had attached certificates of inspection required by law.

18th Nov., 1897.

CHARLES H. SIMONTON, [L. S.]
Circuit Judge.

(Filed Nov. 18th, 1897.)

93 *Petition for Appeal.*

UNITED STATES OF AMERICA,
District of South Carolina.

In the Circuit Court, Fourth Circuit.

W. A. VANDERCOCK COMPANY, a Corporation Created by and under the Laws of the State of California, Complainants,
vs.
S. W. VANCE, W. N. BAHR, J. M. SCOTT, W. LIVINGSTON, C. S. Moseley, M. Peterman, Citizens and Residents of the State of South Carolina, Defendants.

To the honorable judges of the circuit court of the United States for the district of South Carolina:

S. W. Vance, W. N. Bahr, J. M. Scott, W. Livingston, C. S. Moseley, and M. Peterman, parties to the above-entitled cause, present and file this their petition for an appeal to the Supreme Court of the United States from the final decree rendered by Hon. C. H. Simonton in the above-entitled cause on the — day of November, A. D. 1897, granting a perpetual injunction.

Hereto annexed and herewith filed with the clerk of the said court of the United States for the district of South Carolina is an assignment of errors to the said final decree, which sets out separately and particularly each error asserted and intended to be urged and upon which a reversal of the decree is asked.

WM. A. BARBER,
Att'y Gen'l, Defendants' Sol'r.

(Filed Nov. 18th, 1897.)

94 *Assignment of Errors.*

UNITED STATES OF AMERICA,
District of South Carolina.

In the Circuit Court, Fourth Circuit.

W. A. VANDERCOCK COMPANY, a Corporation Created by and under the Laws of the State of California, Complainants,
vs.
S. W. VANCE, W. N. BAHR, J. M. SCOTT, W. LIVINGSTON, C. S. Moseley, M. Peterman, Citizens and Residents of the State of South Carolina, Defendants.

And now come S. W. Vance, W. N. Bahr, J. M. Scott, C. S. Moseley, and M. Peterman, defendants in the above-named cause, and except to the final decree rendered by Hon. C. S. Simonton, United States circuit judge, herein, and filed — day of November, A. D. 1897, granting a perpetual injunction against the defendants:

I. Because the bill of complaint presents no question arising under the Constitution or laws of the United States.

II. Because the bill presents no case upon which the jurisdiction of a court of equity can be founded, as there are plain and adequate remedies at law for the correction of any of the matters and things alleged in the bill, if the said allegations are true.

III. Because the complainant has not in and by the said bill of complaint made or stated a case to entitle said complainant in a court of equity to any relief against them or either of
95 them as to the matters contained in said bill.

IV. Because his honor erred in holding that the provisions of an act of the General Assembly of the State of South Carolina approved March 6, 1896, and amended March 5, 1897, commonly known as the dispensary law, in so far as they forbid citizens of this State or of other States from importing ales, wines, and liquors into this State for sale in original, unbroken packages, are not a lawful exercise of the police power of the State and are in contravention of the Constitution of the United States and interstate commerce acts of Congress.

V. Because his honor erred in holding that the provisions of the said act prohibiting the importation of liquor into this State for sale is not a valid exercise of the police power of the State and does not come within the provisions of the act of Congress of 1890, known as the "Wilson act."

VI. Because his honor erred in holding that the provisions of the said act as amended, providing for the inspection of all liquors brought into the State for use or sale, is not the lawful exercise of the police power of the State and is in contravention of the Constitution of the United States.

VII. Because his honor erred in holding that a non-resident manufacturer or dealer can import wines, ales, and liquors into the State of South Carolina and store and sell the same, either by himself or through an agent, the said agent being a citizen of this State.

96 IX. Because his honor erred in granting the perpetual injunction.

WM. A. BARBER,
Att'y Gen'l, Defendants' Sol'r.

(Filed Nov. 18th, 1897.)

97 *Order Allowing Appeal.*

Prayer of the petitioners granted and appeal allowed.

CHARLES H. SIMONTON,
Circuit Judge.

18th Nov. 1897.
(Filed Nov. 18th, 1897.)

98 *Appeal Bond and Approval.*

THE UNITED STATES OF AMERICA,
District of South Carolina.

In the Circuit Court, Fourth Circuit.

W. A. VANDERCOOK COMPANY, a Corporation Created by and under the Laws of the State of California, Complainants,
vs.
S. W. VANCE, W. N. BAHR, J. M. SCOTT, W. LIVINGSTON, C. S. Moseley, M. Peterman, Citizens and Residents of the State of South Carolina, Defendants.

Know all men by these presents that we, W. H. Ellerbe and W. H. Timmerman, are held and firmly bound unto The W. A. Vandercook Company, a corporation, party complainant in the above case, in the penal sum of two hundred and fifty dollars; to which payment, well and truly to be made and done, we bind ourselves and each and every of our heirs, executors, and administrators and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated at Columbia, S. C., on the 17th day of November, A. D. 1897.

Whereas an appeal has been allowed to S. W. Vance, W. N. Bahr, J. M. Scott, W. Livingston, C. S. Moseley, and M. Peterman on their behalf from the final decree rendered by Hon. C. H. Simonton, United States circuit judge, in the above-entitled case, granting a perpetual injunction:

Now, the condition of the above obligation is such that if
99 the above-bound S. W. Vance, W. N. Bahr, J. M. Scott, W. Livingston, C. S. Moseley, and M. Peterman shall prosecute their said appeal to effect and shall answer and pay all costs incurred by them if they fail to make their appeal good, then the above obligation shall be void and of no effect; otherwise it shall remain in full force and virtue.

W. H. ELLERBE. [L. S.]
W. H. TIMMERMAN. [L. S.]

Signed, sealed, and delivered in the presence of—
W. W. HARRIS.

UNITED STATES OF AMERICA,
District of South Carolina.

Personally appeared before me W. H. Ellerbe and W. H. Timmerman, who, after being duly and severally sworn, say that they are freeholders in the State of South Carolina and are worth the sum of two hundred and fifty dollars over and above all their debts and liabilities and property exempt by law under execution.

W. H. ELLERBE.
W. H. TIMMERMAN. [L. S.]

Sworn to and subscribed before me this 17th day of November, A. D. 1897.

C. P. TOWNSEND, [L S.]
Not. Pub.

Approved:
CHARLES H. SIMONTON,
Circuit Judge.

18th Nov., 1897.
(Filed Nov. 18th, 1897.)

100 *Citation.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to W. A. Vandercook Company, plaintiff, Greeting:

You are hereby cited and admonished to appear at a Supreme Court of the United States, to be holden at Washington on the 15th day of December next, pursuant to a writ of error filed in the clerk's office of the circuit court for the district of South Carolina, wherein S. T. Vance, W. N. Bahr, J. M. Scott, W. Livingston, C. S. Moseley, and M. Peterman are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Charles H. Simonton, judge of the circuit court of the United States for the district of South Carolina, this 19 day of November, in the year of our Lord one thousand eight hundred and ninety-seven.

CHARLES H. SIMONTON,
Circuit Judge.

Service accepted Nov. 18, 1897.

BRYAN & BRYAN,
Pl'ff's Att'ys.

101 *Clerk's Certificate.*

UNITED STATES OF AMERICA, } *To wit:*
District of South Carolina, }

In the Circuit Court, Fourth Circuit. In Equity.

I, J. E. Hagood, clerk of the circuit court of the United States for the district of South Carolina, do hereby certify that the foregoing is a true and correct copy of all the records, proceedings, and decree, &c., in the case of The W. A. Vandercook Company, complainant, against S. W. Vance *et al.*, defendants, rendered as aforesaid, together with all the proceedings had in the cause relating to the same.

Given under my hand and seal of said court, at clerk's office, in the city of Charleston and district aforesaid, this 20th day of November, A. D. 1897.

[Seal U. S. Circuit Court, District of So. Carolina.]

J. E. HAGOOD,
C. C. C. U. S., Dist. S. C.

Endorsed on cover: Case No. 16,727. South Carolina C. C. U. S. Term No., 514. S. W. Vance, W. N. Bahr, J. M. Scott, W. Livingston, C. S. Moseley, & M. Peterman, appellants, *vs.* W. A. Vandercook Company. Filed November 23d, 1897.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 515.

S. W. VANCE, W. N. BAHR, AND J. M. SCOTT, PLAINTIFFS IN ERROR,

vs.

W. A. VANDERCOOK COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA.

FILED NOVEMBER 23, 1897.

(16,728.)

(16,728.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 515.

S. W. VANCE, W. N. BAHR, AND J. M. SCOTT, PLAINTIFFS IN ERROR,

vs.

W. A. VANDERCOOK COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA.

INDEX.

	Original.	Print.
Caption	1	1
Complaint	2	1
Exhibits A, B, and C—Lists of property sued for	7	4
Summons	9	5
Marshal's return of service	11	6
Answer of S. W. Vance	13	7
Answer of W. N. Bahr and J. M. Scott	17	8
Stipulation to waive jury	23	12
Findings of court on issue submitted without jury	24	12
Judgment	26	13
Bill of exceptions	29	15
Deposition of R. R. Turner	30	15
Letter, Bryan & Bryan to Bahr, April 17, 1897	32	16
Telegram, Bryan & Bryan to Vance, April 21, 1897	32	16
Letter, Bryan & Bryan to Vance, April 21, 1897	33	17
Letter, Bryan & Bryan to Vance, April 23, 1897	34	17
Letter, Bryan & Bryan to Vance, April 28, 1897	35	18

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., NOVEMBER 24, 1897.

	Original.	Print.
Deposition of W. A. Vandercook	38	19
W. N. Bahr	39	20
Defendants' requests	40	20
Judge's certificate to bill of exceptions	41	21
Petition and order allowing writ of error	42	21
Appeal bond and approval	43	21
Writ of error	45	23
Citation	46	23
Service of citation	46	24
Clerk's certificate	47	24

1 *Transcript of Record.*

THE UNITED STATES OF AMERICA, *District of South Carolina,* } *To wit:*

In the Circuit Court, Fourth Circuit. At Law.

At a circuit court of the United States for the fourth circuit in and for the district aforesaid, on the first Monday in August, A. D. 1897, before the Honorable Charles H. Simonton, circuit judge of the United States for the fourth judicial circuit, holding said court according to the form of the act of Congress in such case made and provided, the following proceedings were had:

THE W. A. VANDERCOOK COMPANY, a Corporation Created by and under the Laws of the State of California, Plaintiff,
vs.
S. W. VANCE, J. M. SCOTT, and W. N. BAHR, Defendants.

Be it remembered that heretofore, to wit, on the 11th day of May, A. D. 1897, appeared the said plaintiff, The W. A. Vandercook Company, in the aforesaid circuit court, by its attorneys, Messrs. Bryan & Bryan, and filed its complaint; which complaint is in the words and tenor following:

2 *Complaint.*

UNITED STATES OF AMERICA, *District of South Carolina.*

Circuit Court, Fourth Circuit.

THE W. A. VANDERCOOK COMPANY, a Corporation Created by and under the Laws of the State of California, Plaintiff,
vs.
S. W. VANCE, J. M. SCOTT, and W. N. BAHR, Defendants.

The plaintiff above named, complaining of the defendants above named, alleges:

1. That the plaintiff was at the times hereinafter mentioned and is now a corporation created by and under the laws of the State of California, having its principal place of business in the city of Alameda, State of California.

2. That the defendants were at the times hereinafter mentioned and are now citizens and residents of the State of South Carolina.

3. That the plaintiffs are proprietors and owners of certain vineyards in the State of California, known as the vineyards in the San Gabriel, Santa Clara, Fresno, Sonoma, and Napa valleys, and producers of wines and brandies and other liquors from the grapes of such vineyards.

4. That in the month of February and early part of March, 1897, the plaintiff, by its travelling agent, Robert Randolph Turner,

a citizen of the State of Virginia, contracted with and took the orders of certain citizens of the State of South Carolina, residing in the city of Charleston, to deliver to each of the same in the city of Charleston certain packages of wines and brandies, products of the plaintiff's vineyards, then and there agreed upon and ordered by the said residents respectively in the said city
3 of Charleston, and in pursuance thereof plaintiff filled said orders and shipped, on 20th day of March, 1897, from San Francisco, California, by the Southern Pacific R. R. ("Sunset") route, to its agent in the city of Charleston, S. C., one car-load of such wines, &c., products of plaintiff's vineyards as aforesaid, the wine for each of said customers of plaintiff in the city of Charleston, as ordered, being in separate original packages in said car contained to the number of seventy-three (73) packages, more particularly set forth in the schedule marked "A" and hereto annexed and made part of this complaint, and of the value of twelve hundred dollars.

5. That on or about the 16th day of April, 1897, the said car-load of wines, &c., as aforesaid, arrived at its destination at Charleston, South Carolina, at the depot of the South Carolina and Georgia Railroad Company, an interstate common carrier between the city of Augusta, in the State of Georgia, and the city of Charleston, in the State of South Carolina, and the last connecting railroad common carrier in the continuous carriage of said goods from the city of San Francisco, in the State of California, to the city of Charleston, S. C., and while in the depot of and in the custody of said South Carolina and Georgia Railroad Company, as aforesaid, at Charleston, South Carolina, the said defendants, W. N. Bahr and J. M. Scott, claiming to act as State constables under the said act of the General Assembly of South Carolina approved March 6, 1896, and — March 5, 1897 (dispensary law), unlawfully and wrongfully seized without warrant the said seventy-three (73) packages and stopped the delivery thereof; and thereafter, on the 19th day of April, 1897, without warrant took and carried away from the depot of the said South Carolina and Georgia Railroad Company, in the city of Charleston, sixty of the packages of said wines, &c., more particularly set forth in schedule marked "B," hereto annexed and made part of this complaint, of the value of eight hundred dollars, and shipped the same on the 19th April, 1897, to one John T. Gaston, then claiming to act as "State commis-
4 sioner" under said "dispensary law," as aforesaid; and thereafter, on or about the 22nd April, 1897, said sixty packages (as set forth in Exhibit "B") came into the possession of the defendant S. W. Vance, claiming then and now to act as "State commissioner" under said dispensary law, with full notice of said trespass, and who now unlawfully refuses and has repeatedly refused to return said wines, packages, &c., and that on the 28th day of April, 1897, the said defendants, W. N. Bahr and J. M. Scott, seized and carried away from the custody of the South Carolina and Georgia Railroad Company, interstate common carrier at Charleston, S. C., eight packages of wine and brandy, property of the plain-

tiff, shipped from San Francisco, California, to its agent at Charleston, S. C., for the customers of the plaintiff on like orders so obtained by its traveling agent, all of said packages being contained in separate original packages and set forth in Exhibit "C," hereto annexed as part of this complaint, all of which said eight packages have come into the possession of the said defendant, S. W. Vance, with notice of said malicious trespass, and who now unlawfully detains the same and refuses to return the same on demand.

6. Plaintiff further alleges that it is entitled to the immediate possession of said packages of wine, &c., as aforesaid; that the seizing and carrying away forcibly of the said sixty-eight packages, as aforesaid, was done without warrant of law, but, on the contrary, under pretense of legal authority well known by the said defendants to be utterly pretensive, null, and void, to wit, under pretence of authority of an act of the General Assembly of the State of South Carolina, generally known as the dispensary law, approved March 6, 1896, and amended by an act March 5, 1897, to which reference in full is prayed, which said act, in so far as it attempts to abridge the right of the plaintiff to exercise its lawful trade and calling with the citizens of the State of South Carolina, and to have trade and commerce, intercourse and traffic with said citizens and residents in the products of its vineyards, as aforesaid, is not an act enacted in the lawful exercise of the police power of the State of South Carolina, and is a restriction and regulation of commerce between the States and foreign nations, and is in conflict with article I, sections 8 and 9, of the Constitution of the United States and laws of Congress made thereunder, and is unconstitutional, null, and void.

7. That previous to said seizure by defendants, as aforesaid, of such packages of wine, &c., to wit, on the — day of April, 1897, and again after such seizure, to wit, on the — day of April, 1897, again on the — day of April, 1897, and at other times, plaintiff repeatedly gave notice to the defendants of their wrongful and malicious trespass in seizing said packages of wine, and notified said defendants to desist from their unlawful restraint of interstate trade and commerce, well known to said defendants as a gross violation of this plaintiff's rights under the Constitution of the United States, and further warned said defendants that plaintiff would hold them responsible for such malicious trespass by all the penalties of law for plaintiff's redress and punishment of their wrong-doing, and demanded immediate return of said sixty packages of wine, as aforesaid.

8. That notwithstanding such notices and repeated demands of the plaintiff, and notwithstanding the known rights of the plaintiff secured to it by the Constitution and laws of the United States, the said defendants forcibly seized and carried away said packages of wine, as aforesaid, and do now detain the same, and all these unlawful acts they did knowingly, wrongfully, wilfully, and maliciously, with intent to oppress and humiliate and intimidate this plaintiff and make it afraid to rely upon the Constitution and laws of the United States and the judicial power thereof for its protec-

tion in those rights, privileges, and immunities secured to the plaintiff by the Constitution and laws of the United States.

9. The plaintiff further alleges that the said defendants by the said malicious trespass and wrongful detainer, as aforesaid, intended to make an example of the plaintiff and thereby deter it and others from exercising its and their rights and privileges secured
6 by the Constitution and laws of the United States, and to deter it and others from relying upon the Constitution of the United States and the judicial power thereof for the protection of those rights guaranteed by the Constitution of the United States, and that, in contempt of and in defiance of the said Constitution and laws of the United States and of the said judicial power thereunder, the defendants seized and detained, as aforesaid, the said packages of wine, by reason whereof plaintiff's said rights were grossly and continuously violated and abused.

10. That defendants well knew when they made such seizure and committed said trespass and continue, in such wrongful detainer, as aforesaid, that the said trespass, seizure, and detainer was unlawful and forbidden by the Constitution and laws of the United States, but the said defendants did so, trusting and believing that they would be protected from all harm by their official superiors in the State of South Carolina, and that they made such seizure and committed such trespass and detainer wilfully and maliciously, with the purpose and intent to trample on the plaintiff's right under the law and to do it all the injury in their power.

11. That by said malicious trespass of said defendants and their continuation in the wrongful detention of said sixty-eight packages of wine the plaintiff has been greatly injured in its lawful trade and business with the citizens and residents of the State of South Carolina to its great hurt and damage in the breaking up of such trade and commerce.

12. That the value of the said packages of wine is the sum of one thousand dollars; by reason of which wrongs plaintiff has been injured to its damage ten thousand dollars.

Wherefore plaintiff demands judgment against the defendants for the recovery of possession of said sixty-eight packages of wine, as aforesaid, or their value, one thousand dollars, in case de-
7 livery thereof cannot be had, and for damages in the sum of ten thousand dollars.

BRYAN & BRYAN,
Pl'ff's Att'ys.

EXHIBIT "A."

41 kegs wine, California.
10 kegs brandy, "
20 cases wine, "
2 cases champagne, California.

73 packages.

All marked "J. S., Charleston, S. C.," and having stamp of W. A. Vandercook, Los Angeles, California.

EXHIBIT "B."

List of Property Sued for—Sixty Packages.

14 cases California wine.
33 kegs California wine.
½ barrel California wine.
1 case champagne (California).
½ case champagne (California).
1 case brandy (California).
9 kegs brandy (California).

All marked ("J. S., Charleston," for private use) and all bearing the stamp "W. A. Vandercook Co., Los Angeles, California.

EXHIBIT "C."

6 cases California wine.
1 keg California claret.
1 keg California brandy.

All marked "J. S., Charleston," and all bearing the stamp of the W. A. Vandercook Co., Los Angeles, California."

8 THE UNITED STATES OF AMERICA, }
District of South Carolina. }

Personally appeared Robert Randolph Turner, agent of the plaintiff above named, who, being duly sworn, makes oath that the above complaint is true to his knowledge, all of the material facts being within the personal knowledge of this deponent.

ROBERT RANDOLPH TURNER.

Sworn to before me this 3rd day of May, 1897.

ARTHUR BRYAN,
[SEAL.] *Notary Public for South Carolina.*

(Filed May 11th, 1897.)

9 *Summons.*

THE UNITED STATES OF AMERICA, }
District of South Carolina. }

In the Circuit Court, Fourth Circuit.

THE W. A. VANDERCOOK COMPANY, a Corporation Created by and under the Laws of the State of California, Plaintiff,
against
S. W. VANCE, J. M. SCOTT, and W. N. BAHR, Defendants.

To S. W. Vance, J. M. Scott, and W. N. Bahr, defendants in this action:

You are hereby summoned and required to answer the complaint in this action, of which a copy is herewith served upon you, and to

serve a copy of your answer on the subscribers at their office, 11 Broad street, Charleston, S. C., on or before the rule day occurring twenty days next after the service of this summons on you, exclusive of the day of service.

If you fail to answer this complaint within the time aforesaid the plaintiff will apply to the court for the relief demanded in the complaint.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, at Charleston, S. C., the seventh day of May, anno Domini one thousand eight hundred and ninety-seven, and in the 121st year of the sovereignty and Independence of the United States of America.

10 BRYAN & BRYAN,
Plaintiff's Attorneys.

J. E. HAGOOD,
[SEAL.] *C. C. C. U. S., Dist. S. C.*

(Filed May 11th, 1897.)

11 *Marshal's Return of Service.*

THE W. A. VANDERCOOK CO.
vs.
S. W. VANCE *et al.*

UNITED STATES OF AMERICA,
District of South Carolina, Fourth Circuit.

I hereby certify that on the 11th day of May, A. D. 1897, at Charleston, So. Ca., I served on the above-named J. M. Scott and W. N. Bahr personally the summons and complaint in this action by delivering copies thereof to them personally and leaving the same with them in the city of Charleston, S. C.

H. J. HICKSON,
Office Deputy U. S. M.

Sworn to before me May 18, 1897.

J. E. HAGOOD, *Clerk.*

12 UNITED STATES OF AMERICA,
District of South Carolina.

John T. Thornton, dep. marshal, being duly sworn, says that he has served the within summons and complaint on S. W. Vance, one of defendants named herein, at his place of business, in Columbia, S. C., on the 12th day of May, 1897, by delivering to him personally copies of the same, at the same time exhibiting to him the original; that he knows S. W. Vance to be the defendant named herein, and deponent is not a party to this action.

J. T. THORNTON,
Deputy Marshal.

Subscribed and sworn to before me this 13th May, 1897.
JOHN BAUSKETT, *U. S. Com'r.* [L. S.]

13 *Answer of S. W. Vance.*

THE UNITED STATES OF AMERICA,
District of South Carolina.

In the Circuit Court, Fourth Circuit.

THE W. A. VANDERCOOK COMPANY, a Corporation Created by and under the Laws of California, Plaintiff,
vs.
S. W. VANCE, J. M. SCOTT, and W. N. BAHR, Defendants.

The defendant S. W. Vance, by W. A. Barber, attorney general, his attorney, answering the complaint herein, says:

I. He submits that this court has no jurisdiction of the subject-matter and parties in this action.

II. He submits that the complaint does not state facts sufficient to constitute a cause of action.

III. He submits that by the provisions of the dispensary law of South Carolina, approved March 6, 1896, no action of this kind can be maintained against this defendant, who, as State commissioner, is charged with duties under the said law.

IV. He submits that if the action can be maintained there is a misjoinder of causes of action, in that the plaintiff sues for the recovery of the possession of personal property, and also for exemplary damages for the commission of trespass in the taking
14 of the same.

The defendant, further answering the said complaint, says:

I. He has no knowledge or information sufficient to form a belief as to the allegations of the 1st, 3rd, and 4th paragraphs of this complaint.

II. He admits the allegations of the 2nd paragraph of the complaint.

III. That as to the allegations of the 5th paragraph of the complaint he knows nothing, except that certain packages of wine and liquors were shipped to him as State commissioner by the State constable, J. M. Scott, from Charleston, S. C., on the 19th day of April, 1897, and which were received by him, as such commissioner, in the due course of transportation, a copy of the bill of lading for which is hereto attached as a part of the answer; that he received sixty packages, as shown in the said bill of lading, and deposited them in the State dispensary, where they now are; that he received from Chief State Constable W. N. Bahr an appraisement of the said packages and contents made by their appraisers on the 19th of April, A. D. 1897, as sworn to by them, a copy of which is hereto attached as a part of this answer; that he did receive, as State commissioner, on the 23rd day of April, 1897, eight other packages of wine and brandy shipped to him by J. M. Scott, State constable, a copy of which bill of lading is hereto attached as a part of this answer; that he holds said packages of wine and liquor as State commissioner under the dispensary law of South Carolina.

That he denies the allegations of the 6th paragraph of the complaint, and is advised and believes that the said wines and liquors were lawfully seized by the State constable and came rightfully and legally in his possession, and that the dispensary law of South Carolina approved March 6, 1896, and amended in March, 1897, under which the said packages were seized and are now held by him as State commissioner, is an act in the lawful exercise of the proper power of the State and is not in conflict with the Constitution of the United States and the acts of Congress.

V. That he admits the allegations of the 7th paragraph of the complaint.

VI. He denies the allegations of the 8th, 9th, 10th, and 11th paragraphs of the complaint.

VII. That as to the allegations of the 12th paragraph of the complaint, as to the value of the wines and liquors now in his possession, he has no knowledge — information except the appraisement made, as aforesaid, and from this it appears that the wines and liquors are not of the value of one thousand dollars.

Defendant further says that he is at present State commissioner, duly appointed and commissioned under the dispensary law of South Carolina, has given the official bond required, and has been since the 15th day of April, 1897, engaged in the discharge of the duties of said office.

WM. A. BARBER,
Att'y Gen'l, Atty's for Defendants.

UNITED STATES OF AMERICA,
State of South Carolina.

Personally appeared before me S. W. Vance, defendant, who, after being duly sworn, says that the foregoing answer is true of his own knowledge.

S. W. VANCE.

Sworn to and subscribed before me this 2nd day of June, A. D. 1897.

C. P. TOWNSEND, *Not. Pub.* [L. S.]

(Filed June 3rd, 1897.)

Answer of W. N. Bahr and J. M. Scott.

UNITED STATES OF AMERICA,
District of South Carolina.

Circuit Court, Fourth Circuit.

THE W. A. VANDERCOOK COMPANY, a Corporation Created by and under the Laws of the State of California, Plaintiff,
vs.
S. W. VANCE, J. M. SCOTT, and W. N. BAHR, Defendants.

The defendants J. M. Scott and W. N. Bahr, by their attorney, W. A. Barber, attorney general, answering the complaint herein, say:

I. They submit that this honorable court has no jurisdiction of the subject-matter and parties in this action.

II. They submit that the complaint does not state facts sufficient to constitute a cause of action.

III. They submit that the plaintiff in this action is not the real party in interest and cannot maintain this action.

IV. They submit that by the provision of the dispensary law of South Carolina, approved March 6, 1896, no action of this kind can be maintained against the defendant, who is State constable and charged with duties under said law.

V. They submit that there is a misjoinder of causes of action in that the plaintiff sues for the recovery of the possession of personal property and also for exemplary damages for the commission of a trespass in the taking of the same.

The defendants, further answering the complainant, say:

I. They deny each and every allegation of the complaint except as is hereafter specifically admitted.

18 II. That they have no knowledge or information sufficient to form a belief as to the allegations contained in the first and third paragraphs of the complaint, and demand proof of same.

III. They admit the allegations of the 2nd paragraph of the complaint.

IV. That as to the allegations of the 4th paragraph of the bill, they have no knowledge or information sufficient to form a belief, except as to those relating to the arrival of seventy-three packages of wine and brandy in Charleston, S. C., about the time therein stated, and they say that the said packages were in one car, and on the waybill all the wines and brandies were consigned to J. C. Simonds, cashier of one of the national banks in said city, and each package was marked "J. C. Simonds," and none of them had the certificate of the State chemist showing the wines and brandies had been analyzed, as required by law. The defendant W. N. Bahr further says that R. R. Turner, the agent of complainant, while soliciting orders in Charleston, S. C., for these wines and brandies, came to his home and stated to him that he had sold a car-load to different parties in the city and intended to ship them in a car-load lot to J. C. Simonds; wherefore respondent advised him not to ship such wines and brandies in one man's name, but to make each individual package separate and to send to each a bill of lading. Turner then remarked he had been shipping to one man before, as he proposed to ship to J. C. Simonds, and had never been molested, and he intended to do so again; that it was about three weeks after this conversation before the car-load arrived and was unloaded in the depot.

V. That as to the allegations of the 5th paragraph, they admit, on or about the 15th day of April, 1897, the car-load of wines and brandies mentioned in said paragraph did arrive at Charles-

19 ton, S. C., about *the* its point of destination, over the South Carolina & Georgia railroad, and that your respondents, as State constables, did hold up seventy-three packages of win- and liquors in the depot of the said railroad for investigation under the

provisions of the dispensary law of South Carolina, and that said packages had arrived in a car, but had been unloaded and the way bill in the possession of the agent of the said railroad was examined and showed that the entire car-load had been consigned to J. C. Simonds, cashier of the First National bank, and each package was marked in his name; that after holding up said wines and brandies your respondent Bahr made inquiry and investigation into the matter, and on the 18th day of April, A. D. 1897, he received through a telegram a message from Messrs. Buist & Buist that they desired to see him at their office, and he immediately went there and found Mr. Henry Buist and J. C. Simonds in the office, and after some conversation he turned over to J. C. Simonds, cashier First National bank, the party to whom the packages had been consigned, the seventy-three packages of wine and brandies held up at the depot of the South Carolina and Georgia railroad, and at the same time telephoned from the said office to the agent of the railroad and notified him that he had so turned over to J. C. Simonds the said packages and asked him to so inform Constable J. M. Scott, who had held them up; that he received a letter from J. H. Vaughn, said agent of the railroad, that the goods consigned to J. C. Simonds had been delivered to him and bill of lading had been surrendered by him, as will appear from said letter hereto attached as Exhibit "A;" that your respondent Bahr, after so releasing and turning over to J. C. Simonds the said packages, saw J. M. Scott, his co-respondent, and was informed by him that the railroad agent was delivering the wines and brandies on order of J. C. Simonds, when he immediately went to the depot and found that several parties had received packages and had
20 removed them from the depot on orders of J. C. Simonds on the payment of the invoice price of same to him; that after learning these facts he again seized the remaining packages left in the depot on the 17th day of April, 1897, had the same appraised, marked, and shipped to S. W. Vance, State commissioner, Columbia, S. C., who now has the possession of same, and a copy of said appraisement, showing number of packages seized and value of same, is hereto attached as a part of this return; that after the seizure of said packages several citizens of Charleston to whom invoices of some of said wine and brandies had been sent came to your respondent Bahr and asked him to endorse the invoices so that they could get the packages from the depot; to all of whom he replied that he had nothing held up in their names and had no authority to endorse the invoices so that they could get the packages from the depot, as all the liquor seized was marked and consigned to J. C. Simonds, and that the railroad agent would not recognize any orders for delivery of same except from J. C. Simonds; that Mr. A. W. Petit, who held one of those invoices and also a notice from J. C. Simonds, cashier, gave to your respondent Bahr the originals, which are hereto attached as a part of this return, and that two other parties, D. Rhode and C. L. Schmanke, also had invoices sent to them through the mail by the complainant, which they gave to him, and they are herewith exhibited; that your respondent Bahr

saw in the possession of Dr. Buist the notice sent to him by J. C. Simonds and the receipt for the money paid to him when order was given on railroad agent for his package; that since the seizure of the sixty packages, to wit, on the 16th day of April, 1897, he did hold up four packages of wine shipped and consigned to E. L. Tessier, Charleston, S. C., at the depot of the South Carolina and Georgia railroad, but released the same after investigation; that subsequently to this he did seize, on the 29th day of April, 1897, eight packages of wine and brandies
21 consigned by the complainant to J. C. Simonds, shipped into Charleston over the South Carolina and Georgia railroad, which said packages Mr. Simonds refused to accept or have anything to do with, and R. R. Turner, the agent of the complainant, made efforts to sell the said packages to parties in Charleston; that upon receiving this information *that upon receiving this information* from parties to whom he made efforts to sell the said packages he then went before R. R. Gilchrist, a magistrate, and took out a warrant and seized said eight packages under same, which were shipped to S. W. Vance, State commissioner, Columbia, S. C., and they deny that the seizure of said sixty packages or the eight packages mentioned herein was unlawful, and they submit that under the dispensary act, approved March 6, 1897, amended by act approved March 26, 1897, they had authority to seize and hold the same, a copy of which said acts is hereto attached.

VI. The- deny the allegations of the 6th paragraph of the complaint and submit that the dispensary act approved March 6, 1896, and amended March, 1897, was enacted in the lawful exercise of the police power of the State of South Carolina and is not a restriction and regulation of commerce between the States and foreign nations and is not in conflict with article I, sections 8th and 9th, of the Constitution of the United States and the acts of Congress and is constitutional.

VII. They admit, as alleged in the 7th paragraph of the complaint, they did receive two letters of about the purport stated, one of the letters being received on the 17th day of April, 1897, and one after the seizure of the said wines and liquors.

VIII. They know nothing about the value of the wines and liquors, but deny tha., according to their best information and knowledge, that their value was one thousand dollars, and they further deny that the plaintiff has been damaged ten thousand dollars.

22 Defendants further say that W. N. Bahr is chief State constable and J. M. Scott is State constable, duly appointed under the dispensary law of South Carolina, and was at the time hereinbefore stated.

Wherefore defendants demand judgment that the complaint be dismissed with costs.

WM. A. BARBER,
Att'y Gen'l, Attorney for Defendants.

UNITED STATES OF AMERICA,
State of South Carolina.

Personally appeared before me W. N. Bahr and J. M. Scott, who, after being respectively and duly sworn, say that the foregoing answer is true of their own knowledge.

W. N. BAHR.
J. M. SCOTT.

Sworn to and subscribed before me this 2nd day June, A. D. 1897.
C. P. TOWNSEND, *Not. Pub.* [L. S.]

(Filed June 3rd, 1897.)

23 *Stipulation to Waive Jury.*

THE UNITED STATES OF AMERICA,
District of South Carolina.

In the Circuit Court, Fourth Circuit.

THE W. A. VANDERCOOK COMPANY, a Corporation Created by and under the Laws of the State of California, Plaintiffs,
vs.
S. W. VANCE, J. M. SCOTT, and W. N. BAHR, Defendants.
} Action at Law.

It is hereby stipulated and agreed by and between the attorneys of record herein that the issues of fact in the above cause be tried and determined by the court without a jury.

November 19th, 1897.

BRYAN & BRYAN,
Pl'ffs' Att'ys.
WM. A. BARBER,
Att'y Gen'l, Defendants' Att'y.

(Filed Nov. 18th, 1897.)

24 *Findings of Court on Issue Submitted without Jury.*

THE UNITED STATES OF AMERICA,
District of South Carolina.

In the Circuit Court, Fourth Circuit.

THE W. A. VANDERCOOK COMPANY, a Corporation Created by and under the Laws of the State of California,
vs.
S. W. VANCE, J. M. SCOTT, and W. N. BAHR, Citizens of the State of South Carolina.

This cause having been, by stipulation between the parties, dated 18th day of November, 1897, filed the 18th day of November, 1897, submitted to the court for trial to determine the issues of facts herein without the intervention of the jury, and said cause having

been heard by the court, now, upon consideration thereof, the court finds the following facts: That the property described in the complaint is the property of the plaintiff, and that the value thereof is the sum of one thousand dollars, and that the damages to the plaintiff from the detention of the said property by the defendants is the sum of one thousand dollars.

As a matter of law, the court finds that the plaintiff is entitled to judgment against the defendants for the recovery of the possession of the said property described in the complaint, or the sum of one thousand dollars, value of said property, in case delivery thereof cannot be had, and for the further sum of one thousand
25 dollars damages.

Let judgment be entered up accordingly.

CHARLES H. SIMONTON,
Circuit Judge.

18th Nov., 1897.

(Filed Nov. 18th, 1897.)

26 *Judgment.*

THE UNITED STATES OF AMERICA, }
District of South Carolina. }

In the Circuit Court, Fourth Circuit. At Law.

W. A. VANDERCOOK COMPANY, a Corporation Created by and under the Laws of the State of California, Plaintiff,
against
S. W. VANCE, J. M. SCOTT, and W. N. BAHR, Citizens of the State of South Carolina, Defendants.
} Judgment by the Court.

This cause having been brought to trial before the circuit court of the United States held on the 18th day of November, 1897, a jury having been waived and issued of fact having been submitted to the court, as appears by the stipulation filed in the record herein, the court having found that the property described in the complaint, to wit:

Sixty-eight packages of California wine and brandies,
14 cases California wine,
33 kegs California wine,
½ barrel California wine,
1 case champagne (California),
½ case champagne (California),
1 case brandy (California),
9 kegs brandy (California),
27 All marked ("J. S., Charleston, for private use,") and all bearing the stamp "W. A. Vandercook Co., Los Angeles, California;"
6 cases California wine,

1 keg California claret,
1 keg California brandy,
All marked "J. S., Charleston," and all bearing stamp of W. A. Vandercook Co., Los Angeles, California;

Is property of the plaintiff, and that the value thereof is the sum of one thousand dollars, and that the damages to the plaintiff by reason of the detention of said property by the defendants is the sum of one thousand dollars, and the costs having been adjudged at fifty $\frac{1}{100}$ dollars, and the court having further ordered that judgment issue according to said finding:

Now, on motion of Bryan & Bryan, attorneys for plaintiff, W. A. Vandercook Company, it is adjudged that the said W. A. Vandercook Company recover of said defendants, S. W. Vance, J. M. Scott, and W. N. Bahr, the personal property above described, to wit:

Sixty-eight packages of California wine and brandies,
14 cases California wine,
33 kegs California wine,
$\frac{1}{2}$ barrel California wine,
1 case champagne (California),
$\frac{1}{2}$ case champagne (California),
1 case brandy (California),
9 kegs brandy (California),
All marked ("J. S, Charleston, for private use,") and all bearing the stamp "W. A. Vandercook Co., Los Angeles, California;"
6 cases California wine,
28 1 keg California claret,
1 keg California brandy,
All marked "J. S., Charleston," and all bearing stamp of the W. A. Vandercook Co., Los Angeles, California, or the value thereof in the sum of one thousand dollars in case a delivery thereof cannot be had, and an additional sum of one thousand dollars damages so found, together with fifty $\frac{1}{100}$ dollars costs.

BRYAN & BRYAN,
Plaintiff's Att'ys.

Taxed costs.
Signed judgment.
Nov. 18th, 1897.
[SEAL.]

J. E. HAGOOD,
C. C. C. U. S., Dist. S. C.

(Filed Nov. 18th, 1897.)

29 *Bill of Exceptions.*

UNITED STATES OF AMERICA,
District of South Carolina.

Circuit Court, Fourth Circuit. At Law.

W. A. VANDERCOOK COMPANY, a Corporation Created by and under the Laws of the State of California, Plaintiff, Defendant in Error,

vs.

S. W. VANCE, J. M. SCOTT, and W. N. BAHR, Defendants.

Be it remembered that on the — day of November, at the regular term of the said court, begun and holden in the city of Greenville, in and for the district of South Carolina, before Honorable Charles H. Simonton, the issues in the above-stated cause came on to be tried before said judge, presiding in said court, without a jury, plaintiff being represented by Messrs. Bryan & Bryan, his attorneys, and defendants by the Honorable William A. Barber, attorney general of the State of South Carolina, defendants' attorneys.

The evidence of the plaintiff, which is embodied in the following statement, shows the following facts:

30 The deposition of R. R. TURNER on behalf of plaintiff is as follows:

I am travelling agent of The Vandercook Co., plaintiff (a resident and citizen of Virginia).

The plaintiff is a corporation created under the laws of the State of California, and *are* proprietors and owners of a number of vineyards in the State of California, known as "San Gabriel," "Santa Clara," Fresno," "Simono," and "Napa" valleys, and producers of wines and brandies from the grapes thereof. In the months of February and March, 1897, as such travelling agent I took the orders of a number of residents of Charleston, South Carolina, for purchase of certain packages of wines and brandies, products of plaintiff's vineyards, set forth particularly in the complaint and exhibits, and in pursuance of such orders the W. A. Vandercook Co., on the 20th day of March, 1897, shipped the same from San Francisco, consigned to their agent, J. Simonds, cashier First National bank, at Charleston, South Carolina, in seventy-three separate original packages, each package to be delivered by its agent to person ordering same, and making a car-load lot of the value of twelve hundred dollars. This car-load of wines arrived in Charleston on 16th April, 1897, and while in depot of South Carolina and Georgia Railroad Company at Charleston were seized by defendants W. N. Bahr and J. M. Scott, without warrant, and delivery of the same were stopped. Sixty packages, of the value of eight hundred dollars, as set forth in Exhibit "B," were taken away from the depot by defendants and shipped to defendant S. W. Vance at Columbia, claiming to act as "commissioner," who received same about 22nd April, 1897, with

full notice of the trespass as above; and on the 29th April, 1897, the defendants Bahr and Scott seized at said railroad depot
31 at Charleston, S. C., eight other original unbroken packages of wines and brandies, as set forth in Exhibit "C" of the complaint, of the value of two hundred dollars, products of plaintiff's vineyards, and shipped by plaintiff to Charleston, S. C., to its agent, on like orders of its customers, for delivery to them, and the same were sent to Columbia, S. C., to S. W. Vance, defendant, who received them with full notice of the trespass; that after repeated demand and warning the said S. W. Vance and other defendants refused to return any of the said packages; that said seizure and detention were wilfully, knowingly, and maliciously done and continued; that defendants were notified by Bryan & Bryan, counsel for W. A. Vandercook Co., as follows:

By the following letters and telegrams received by defendants:

32 *Letter.*

APRIL 17, 1897.

Mr. W. N. Bahr (individually), Charleston, S. C.

DEAR SIR: We are informed by the public press that yesterday, claiming to act as a State constable, you entered the South Carolina & Georgia Railroad station, Charleston, S. C., and seized a number of packages of wines and liquors then in said depot and in due course of transportation from the W. A. Vandercook Co., California, to their several consignees marked thereon, Charleston, S. C.

You were notified by the label on said packages that you were violating the law, and we again give you notice that such action on your part was a wanton, gross, and defiant trespass and outrage, for which you are liable, both criminally and in civil suits, for compensatory, punitive, and vindictive damages, and we demand that you forthwith release all such unlawful stoppage that you have attempted to make, and further desist from these unlawful restraints of interstate trade and commerce, well known to you as a gross violation of rights of our clients under the Constitution of the United States.

Yours respectfully, BRYAN & BRYAN.

Telegram.

CHARLESTON, *April* 21, 1897.

S. W. Vance, Columbia, S. C.:

We demand immediate return of sixty packages wines and liquors marked J. S. Charleston wrongfully seized by one J. M. Scott at South Carolina & Georgia Railroad depot here Mon-
33 day nineteenth April and shipped to John Gaston Columbia by North Eastern railroad same day. We notify you of his malicious trespass and your participation in his malicious trespass if you receive or detain these goods.

Awaiting your reply by telegram.

BRYAN & BRYAN,
Att'ys for Owner.

Letter.

APRIL 21, 1897.

S. W. Vance, Esq., Columbia, S. C.

DEAR SIR: We beg to say that we have telegraphed you this day as follows:

CHARLESTON, *April* 21, 1897.

S. W. Vance, Columbia, S. C.:

We demand immediate return of sixty packages wines and liquors marked J. S. Charleston wrongfutly seized by one J. M. Scott at South Carolina & Georgia Railroad depot here Monday nineteenh April and shipped to John Gaston Columbia by North Easton railroad same day. We notify you of his malicious trespass and your participation in his malicious trespass if you receive or detain these goods.

Awaiting your reply by telegram.

BRYAN & BRYAN,
Att'ys for Owner.

We beg to repeat this notice to you requesting an immediate answer.

Yours respectfully, BRYAN & BRYAN.

P. S. We beg to say that we write this letter to you in your individual capacity and notify you that any State law under which you claim to act or under which J. M. Scott claims to act is absolutely null and void under the Constitution of the United States, as
34 you are well aware, and is no shield or shelter for his or your wrong doing.

Yours respectfully, BRYAN & BRYAN.

Letter.

APRIL 23, 1897.

S. W. Vance, Esq., Columbia, S. C.

DEAR SIR: We have your telegram this day in reply of our previous demands, as follows:

"The wines and liquors seized by Constable Scott have reached me, and I respectfully refuse to return the same as requested by you."

We beg again to notify you of your malicious and defiant conduct in detaining these goods and warn you that your action is without any lawful authority, and that you will be held responsible therefor by all the pains, punishments, and penalties known to the law for redress of our clients and protection of their rights under the Constitution of the United States.

We demand again return of these goods instantly, and notify you again that the law requires us to deal with you individually and personally, as you have no shadow of legal excuse and cannot shelter yourself behind any advice or direction of any official, whoever he may be.

Yours respectfully, BRYAN & BRYAN.

35 *Letter.*

APRIL 28, 1897.

S. W. Vance, Esq., Columbia, S. C.

DEAR SIR: We beg to acknowledge receipt this day of a letter of 26th inst., signed by yourself, S. W. Vance, but to which you have added the word "commissioner."

We beg to refer you to our former letters and telegrams to yourself, in which we have addressed you in your individual and private capacity, and have not had, and do not expect to have, any communication with you in this matter as a commissioner—that is, as a State official acting under any valid law of the State of South Carolina.

We have notified you that any law under which you claim to act in receiving and detaining these packages of wine, after our notice to you in advance, is unconstitutional, null, and void under the Constitution of the United States, which is the paramount and supreme law of this land.

You, therefore, we have told you, had no official sanction or warrant for your participation in the malicious trespass of J. M. Scott, well known to you to be a malicious trespass, because we have distinctly notified you and warned you in advance as to your participation in the same.

We beg now to repeat our notice to you that your conduct in retaining these packages is both malicious and defiant—malicious, in that you are consciously violating the property rights of our clients,

36 breaking up their business, and attempting to deter them in future from exercise of their legal rights and lawful business; defiant, in that you wilfully oppose the known law, declared in principle by the Supreme Court of the United States, after repeated warning from ourselves.

We beg to further notify you that we shall hold you responsible for this continued wrong-doing by all the processes known to the law for the vindication and protection and redress of the rights of our clients and the prevention of your wrong-doing in the future.

We beg further to say to you that this matter has no personal aspect. It is a matter of public law, binding upon all the citizens of this country, and of the common right and privilege of all the citizens of this country, and no one can give you power to be above the law, and your attempt to do so is gross oppression and monstrous to the citizen and his right- guaranteed by the Constitution of the United States.

We again demand of you the delivery of possession of these sixty packages of wines, etc., and upon refusal we beg to repeat our notices and warnings to you.

Yours respectfully, BRYAN & BRYAN.

I, myself, also gave repeated personal, verbal notices to defendants W. N. Bahr and J. M. Scott of their wrong-doing and demanded return of the packages by them.

That notwithstanding said notices the defendant seized and detained said packages of wine, and same was done after full notice, as

aforesaid, and with intent to oppress, humiliate, and intimidate plaintiff and make example of plaintiff, and deter it and
37 others from exercising their right, privilege, and immunities of interstate trade, commerce, and intercourse with citizens and residents of South Carolina in the products of its vineyards secured to them under Constitution and laws of the United States, and with intent to break up the plaintiff's lawful interstate trade and commerce in said products.

The plaintiff was greatly injured in its business and trade by such seizure and detention of its vine products, and lost for two months its trade and business with the citizens and residents of South Carolina; that the plaintiff's actual loss thereby exceeds twelve hundred dollars.

Before, during, and after these seizures intoxicating liquors—*inter alia*, whiskey, beer, wine, and brandy—were being manufactured in the State of South Carolina. The distilleries, breweries, and vineyards were producing spirituous liquors, wine, and beer within the State, and the same was used as a beverage in the State and sold within the State by State agents, known as dispensers, at State liquor shops, known as dispensaries, under the provisions of the so-called State liquor dispensary law (act 1896, 1897), and such liquor-, products of the State of South Carolina, were being exported to other States by its citizens from the State; same liquors, products of other States, were being imported by the State board of control from other States and sold by dispensers in broken packages and unbroken original packages. The imports consisted wholly of such products of other State or States as the board of control chose to import. No products of the Vandercook vineyards have ever been imported by the board of control or at any time offered for sale in State liquor dispensaries in South Carolina.

The United States Government has issued, upon applica-
38 tion, licenses for wholesale and retail liquor dealers under the Revised Statutes of the United States, sec. —, to the State liquor dispensaries throughout the State of South Carolina, and usual license fees have been paid by the State.

Deposition of W. A. Vandercook, President of the Plaintiff Company, on Behalf of Plaintiff.

Since the interlocutory injunction filed in the case on — day of ——, 1897, the W. A. Vandercook Company have established in the cities of Charleston, Columbia, and Greenville, and other cities, agencies for the storing, warehousing, and selling in original, unbroken packages, as imported, wines, &c., products of their California vineyards; the same have not been at any time sold in any town or city where, by the law of the State of South Carolina, all sale of intoxicating liquors by the State dispenser or otherwise is prohibited, and the same are sold in original, unbroken pakages as imported, and not sold to minors or drunkards, not sold to be drunk on the premises or opened on the premises, are sold in the daytime within the legal hours of sale.

We have been and are willing to have the products of our vineyards inspected by the State of South Carolina under any lawful and reasonable system of inspection. The law of the State denies us inspection and sale of our goods in original packages in the State. There has been no demand upon us at any time by any officer of the State for inspection of our goods sold in our agencies in original packages as imported into the State.

The plaintiff, The W. A. Vandercook Co., is a corporation created by and under the laws of the State of California.

39 *Deposition of W. N. Bahr, Defendant.*

All the defendants were State constables duly appointed and commissioned under the act of the General Assembly of South Carolina known as the dispensary law, approved March 6th, 1896, amended March 5th, 1897, and acted as such constables at the time of the seizure, and made the seizures under said acts.

That none of the wines and liquors imported into the State by plaintiff were inspected as required by the provision of the amendment of 1897 to the dispensary law, 1897, and none of them had attached certificates of inspection required by law.

40 At the trial of said cause the defendants S. W. Vance, J. M. Scott, and W. N. Bahr, being the plaintiffs in error herein, prayed the court to hold and find a law as follows, to wit: His honor is requested by the defendants to hold and find as matters of law:

I. That the court has no jurisdiction of the subject-matter of the action.

II. That the plaintiff in the action is not the real party in interest.

III. That by the provisions of the dispensary law of South Carolina, approved March 6, 1896, no action of this kind can be maintained against the defendants, who are State constables and State officers and charged with duties under the law.

IV. That there is a misjoinder of cause of action, in that the plaintiff sues for the recovery of the possession of personal property and also for exemplary damages for the commission of a trespass in taking the same.

V. That the act of the General Assembly of the State of South Carolina approved March 6, 1896, and as amended March 5, 1897, generally known as the dispensary law, is not in conflict with article 9 of the Constitution of the United States and is a lawful exercise of the police power of the State in prohibiting the importation by the plaintiff into the State of South Carolina of all intoxicating liquors, products of other States and foreign countries, for storing and sale in South Carolina, and in authorizing a seizure of such intoxicating liquors so imported into the State by plaintiff or any other person.

VI. That the provisions of the said act are not in conflict with article 9 of the Constitution of the United States, and *is* a valid

exercise of the police power of the State in prohibiting the importation of liquor into the State without an inspection of
41 the same, as required by act of 1896, as amended by act of 1897.

VII. That the provisions of the said act prohibiting the importation of liquors into this State for sale *is* not a valid exercise of the police power of the State within the provisions of the act of Congress of 1890, known as the "Wilson act."

And thereupon the court refused to hold and find as matters of law, as requested by the defendants. Thereupon the defendants duly excepted.

And thereupon, on the — day of November, 1897, the court, without a jury, rendered a judgment for the plaintiff for the personal property or its value and the sum of one thousand dollars damages; and thereafter, to wit, on the — day of November, 1897, judgment for plaintiff was duly entered in said cause in the circuit court of the United States for the district of South Carolina for the personal property or its value and the sum of one thousand damages and costs.

And inasmuch as the aforesaid matter did not appear by verdict of the jury, the defendants, by their counsel, pray that their bill of exceptions may be allowed, and it is accordingly allowed, signed, and sealed by the presiding judge this 18 day of November, A. D. 1897.

CHARLES H. SIMONTON,
Circuit Judge. [L. S.]

(Filed Nov. 18th, 1897.)

42 *Petition and Order Allowing Writ of Error.*

This bill of exceptions having been filed and a writ of error prayed—

Ordered that the writ do issue.

CHARLES H. SIMONTON,
Circuit Judge.

(Filed Nov. 18th, 1897.)

43 *Appeal Bond and Approval.*

THE UNITED STATES OF AMERICA, }
District of South Carolina. }

In the Circuit Court, Fourth Circuit.

W. A. VANDERCOOK COMPANY, a Corporation Created by and under the Laws of the State of California, Plaintiff,
vs.
S. W. VANCE, J. M. SCOTT, and W. N. BAHR, Defendants.

Know all men by these presents that we, W. H. Ellerbe and W. H. Timmerman, are held and firmly bound unto W. A. Vandercook

Company in full and just sum of two hundred and fifty dollars, to be paid to the said W. A. Vandercook Company, their certain attorneys, successors, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 17th day of November, A. D. 1897.

Whereas lately, at a session of the United States circuit court for the district of South Carolina, in a suit depending in the said court between W. A. Vandercook Company and S. W. Vance, J. M. Scott, and W. N. Bahr, a judgment was rendered against the said S. W. Vance, J. M. Scott, and W. N. Bahr, and the said S. W. Vance, J. M. Scott, and W. N. Bahr having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse
44 the judgment in the aforesaid suit, and a citation directed to the said W. A. Vandercook Company, citing and admonishing them to be and appear at the United States Supreme Court, to be holden at Washington, on the day in the said citation mentioned:

Now, the condition of the above obligation is such that if the said S. W. Vance, J. M. Scott, and W. N. Bahr shall prosecute said writ of error to effect and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

W. H. ELLERBE. [L. S.]
W. H. TIMMERMAN. [L. S.]

Sealed and delivered in the presence of—

W. W. HARRIS.

UNITED STATES OF AMERICA,)
District of South Carolina.)

Personally appeared before me W. H. Ellerbe and W. H. Timmerman, who, after being duly and severally sworn, say that they are freeholders in the State of South Carolina, and are worth the sum of two hundred and fifty dollars over and above all their debts and liabilities and property exempt by law *under* execution.

W. H. ELLERBE.
W. H. TIMMERMAN.

Sworn to and subscribed before me this 17th November, A. D. 1897.

C. P. TOWNSEND, *Not. Pub.* [L. S.]

Approved:
CHARLES H. SIMONTON,
Circuit Judge.

18th Nov., 1897.

(Filed Nov. 18, 1897.)

45 *Writ of Error.*

THE UNITED STATES OF AMERICA:

The President of the United States to the honorable the judges of the circuit court of the United States for the district of South Carolina, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, between W. A. Vandercook Company, plaintiff, respondent, and S. W. Vance, W. N. Bahr, and J. M. Scott, plaintiffs in error, manifest error hath happened, to the great damage of the said S. W. Vance, W. N. Bahr, and J. M. Scott, plaintiffs in error, as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the 15th day of December next, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and custom of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 18th of November, in the year of our Lord one thousand eight hundred and ninety-seven.

Seal U. S. Circuit Court, District of So. Carolina.

J. E. HAGOOD,
C. C. C. U. S., Dist. S. C.

46 *Citation.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to W. A. Vandercook Company, plaintiff, Greeting:

You are hereby cited and admonished to appear at a Supreme Court of the United States, to be holden at Washington, on the 15 day of December next, pursuant to a writ of error filed in the clerk's office of the circuit court for the district of South Carolina, wherein S. W. Vance, W. N. Bahr, and J. M. Scott are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Charles H. Simonton, judge of the circuit court of the United States for the district of South Carolina, this 19

day of November, in the year of our Lord one thousand eight hundred and ninety-seven.

CHARLES H. SIMONTON,
Circuit Judge.

Service accepted Nov. 18, 1897.

BRYAN & BRYAN,
Pl'ff's Att'ys.

47 *Clerk's Certificate.*

UNITED STATES OF AMERICA, }
District of South Carolina. }

In the Circuit Court, Fourth Circuit. At Law.

I, J. E. Hagood, clerk of the circuit court of the United States for the district of South Carolina, do hereby certify that the foregoing is a true and correct copy of all the records and proceedings in the case of The W. A. Vandercook Company, plaintiff, against S. W. Vance *et al.*, defendants, rendered as aforesaid, together with the judgment and all things relating to the same, as appears by the records now on file in my office.

Given under my hand and seal of said court, at clerk's office, in the city of Charleston, S. C., in the district aforesaid, this 20th day of November, A. D. 1897.

[Seal U. S. Circuit Court, District of So. Carolina.]

J. E. HAGOOD,
C. C. C. U. S., Dist. S. C.

Endorsed on cover: Case No. 16,728. South Carolina C. C. U. S. Term No., 515. S. W. Vance, W. N. Bahr, & J. M. Scott, plaintiffs in error, *vs.* W. A. Vandercook Company. Filed November 23d, 1897.

No. 514 & 515.

Motion Papers for Vance et al

FILED
NOV 26 1897
JAMES H. McKENNEY,
CLERK

Filed Nov. 26, 1897.

Supreme Court of the United States.

OCTOBER TERM, 1897.

No. 514.

S. W. VANCE ET AL., APPELLANTS,

vs.

W. A. VANDERCOOK COMPANY.

AND

No. 515.

S. W. VANCE ET AL., PLAINTIFFS IN ERROR,

vs.

W. A. VANDERCOOK COMPANY.

MOTION TO ADVANCE.

WILLIAM A. BARBER,
Attorney General of South Carolina,
for Appellants and Plaintiffs in Error.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C. 11-26-97

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1897.

No. 514.

S. W. VANCE ET AL., APPELLANTS,

vs.

W. A. VANDERCOOK COMPANY.

AND

No. 515.

S. W. VANCE ET AL., PLAINTIFFS IN ERROR,

vs.

W. A. VANDERCOOK COMPANY.

MOTION TO ADVANCE.

These two cases involve substantially the same question; and, by agreement of counsel, the Court is asked to hear them together. Both grow out of the same transaction. The issue is the validity of so much of a certain act of the General Assembly of South Carolina, commonly known as the dispensary law, as prohibits non-resident manufacturers and dealers from importing into the State of South Carolina

spirituous and intoxicating liquors, the products of other States and foreign countries, and storing and selling the same within the said State in "original packages" by or through agents appointed for such purpose. These suits are brought against officers of the State in consequence of the seizure by them pursuant to said act of certain liquors shipped into the State for sale, and it is of great public importance that the question be determined by this honorable Court as speedily as is practicable.

The attorney general of South Carolina, therefore, respectfully moves the Court to advance these cases on the docket and set them down for argument on some early date convenient to the Court. In this connection it is respectfully suggested that the General Assembly of South Carolina will convene in regular session on the second Tuesday in January next, and a speedy decision from this honorable Court would be of great value to the State as a guide to legislative action during that session.

Opposing counsel concur in this motion, of which fact proof appears from the stipulation hereto appended. Printed copies of the transcript of record in both cases have been forwarded to opposing counsel by the clerk of this court, as provided in said stipulation.

WM. A. BARBER,
Attorney General.

SUPREME COURT OF THE UNITED STATES.

Appeal from—

UNITED STATES OF AMERICA,
District of South Carolina.

Circuit Court, Fourth Circuit. In Equity.

THE W. A. VANDERCOOK COMPANY, a Corporation Created by and under the Laws of the State of California, a Citizen and Resident of the State of California, Complainant,

vs.

S. W. VANCE, W. N. BAHR, J. M. SCOTT, W. LIVINGSTON, C. S. MOSELEY, and —— PETERMAN, Defendants.

SUPREME COURT OF THE UNITED STATES.

Writ of error from—

UNITED STATES OF AMERICA,
District of South Carolina.

Circuit Court, Fourth Circuit.

THE W. A. VANDERCOOK COMPANY, a Corporation Created by and under the Laws of the State of California, Plaintiff,

vs.

S. W. VANCE, J. M. SCOTT, and W. N. BAHR, Defendants.

Action at Law.

Upon the motion of the attorney general of South Carolina to docket and advance the above-named cases for hearing before the Supreme Court of the United States, we consent that the same shall be docketed and advanced for hearing on a day fixed, as the Supreme Court of the United States may direct, provided that the day fixed shall be not earlier than two weeks after we shall have been served with printed

transcript of record in both above-entitled causes, and provided further that the above causes, in law and in equity respectively, be heard together by the Supreme Court of the United States.

BRYAN & BRYAN,
J. P. K. BRYAN,
Plaintiff's Attorneys.

NOVEMBER 18, 1897.

No. 514.
Brief of Barber for Appellants
Filed Feb. 28, 1898.

Office Supreme Court U. S.
FILED.
FEB 28 1898
JAMES H. McKENNEY,

BRIEF FOR APPELLANTS.

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1897.

No. 514.

S. W. VANCE, W. N. BAHR, J. M. SCOTT, W. LIVINGSTON, C. S. MOSELEY, AND M. PETERMAN, APPELLANTS,

vs.

W. A. VANDERCOOK COMPANY.

Appeal from the Circuit Court of the United States for the District of South Carolina.

WILLIAM A. BARBER,
ATTORNEY GENERAL OF SOUTH CAROLINA,
For Appellants.

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1897.

No. 514.

S. W. VANCE, W. N. BAHR, J. M. SCOTT, W. LIVINGSTON, C. S. MOSELEY, AND M. PETERMAN, APPELLANTS,

vs.

W. A. VANDERCOOK COMPANY.

Brief Submitted in Behalf of Appellants, by Wm. A. Barber, Attorney General of South Carolina.

STATEMENT OF THE CASE.

On the third day of May, 1897, the W. A. Vandercook Company, a corporation under the laws of the State of California, and citizen of California, filed a bill in the Circuit Court of the United States for the District of South Carolina, against S. W. Vance, W. N. Bahr, J. M. Scott, W. Livingston, C. S. Moseley, M. Peterman, and all other persons acting as officers of the State of South Carolina, under the Act of the General Assembly of said State, known as the "Dispensary Law," approved March 5, 1896, and amended March 6, 1897, alleging that the complainant is the proprieter of vineyards in the State of California, where wines, brandies, and other liquors are manufactured, claiming the right to import their product into the State of South Carolina, and there expose for sale and sell the same in unbroken, original packages to citizens and residents of said State; and

praying that the defendants be restrained and enjoined from in any wise interfering with the business of the complainant in selling their product in the State of South Carolina, as aforesaid.

The bill alleges that so much of the said Dispensary Act as prevents the complainant from so selling wines, brandies, and other liquors to the citizens and residents of the State of South Carolina is in conflict with Article I., Sections 8 and 9, of the Constitution of the United States. This bill was filed after the complainant had shipped into the State a quantity of wines, brandies, and other liquors, which were seized by some of the defendants under the said Dispensary Law, and in consequence of said seizure. Upon filing the bill, a rule to show cause was issued, returnable on May 17th, 1897, at which time the respondents filed returns, submitting that the Court was without jurisdiction: (1) because the bill presented no question arising under the Constitution and laws of the United States; (2) because there is no equity in the bill, as there are plain and adequate remedies at law for the redress of the matters therein alleged. As a further return, the defendants answered each and every allegation in the bill of complaint, and justified their action under the authority of the Dispensary Act, approved March 5, 1896, as amended March 6, 1897, which said Act they contend is a valid exercise of the police power of the State.

Upon hearing the case, the Circuit Court granted a temporary order of injunction, and a temporary writ was issued on June 7, 1897. Since the filing of the interlocutory injunction, the complainant, the W. A. Vandercook Company, have established in Charleston, Columbia, Greenville, and other cities, agencies for storing, warehousing, and selling their wines, brandies and other liquors, in, what they claim, are original, unbroken packages, and have appointed citizens of South Carolina as their agents. These liquors are sold in quantities as small as one-half pint, and are not subjected to any system of inspection or analysis.

The defendants filed their answers in due time, and upon a final hearing the Circuit Court rendered a decree, "That the interlocutory injunction and decree hereinbefore decreed by this Court, dated June 3d, 1897, be made permanent, and do stand as the decree of this Court."

From this the appeal is taken to this Court, raising the following questions:

First. Whether the bill of complaint presents a question arising under the Constitution and laws of the United States.

Second. Whether the complaint states facts entitling the complainant to relief in a Court of Equity.

Third. Whether the provisions of the Dispensary Law of South Carolina, approved March 5, 1896, and amended March 6, 1897, prohibiting non-resident manufacturers and liquor dealers from importing wines and liquors into the State of South Carolina, and there storing, offering for sale, and selling the same in unbroken packages of one pint, one quart, one gallon, and the like, are in the lawful exercise of the police power of the State.

Fourth. Whether the terms of the Dispensary Act, as amended, providing for the inspection of all liquors brought into the State for use or sale, are a lawful exercise of the police power of the State.

The appellants contend that no Federal question is presented to give jurisdiction to the Court, and that the Dispensary Law is constitutional and valid, in so far as it prohibits non-resident manufacturers and dealers from importing their liquors into the State of South Carolina, and there selling the same, either themselves or through their agents, the said agents being citizens of said State.

ARGUMENT.

I.

It is essential to a full consideration of this case to differentiate in the outset the Act of the General Assembly of South Carolina under which the question arises from the Act of January 2, 1895, under which this Court decided the case of Scott et al. v. Donald. We can not do so in any better way than by contrasting the sections of the former Act referred to by this Court in its decision in that case with the correspondings sections of the Act as it now stands.

ACT OF 1895.

SECTION 1. Be it enacted by the Senate and House of Representatives of the State of South Carolina, now met and sitting in General Assembly, and by the authority of the same, That the manufacture, sale, barter or exchange, receipt, acceptance, delivery, storing and keeping in possession, within this State, of any spirituous, malt, vinous, fermented, brewed (whether lager or rice beer) or other liquors, or any compound or mixture thereof, by whatever name called or known, which contains alcohol and is used as a beverage by any person, firm or corporation; the transportation, removal, the taking from the depot or other place by consignee or other person, or the payment of freight or express or other charges, by any person, firm, association or corporation, upon any spirituous, malt, vinous, fermented, brewed (whether lager, rice or other beer) or other liquor, or any compound or mixture thereof, by whatever name called or known, which contains alcohol and is used as a beverage, except as is hereinafter provided, is hereby prohibited, under a penalty of not less than three (3) nor more than twelve (12) months at hard labor in the State penitentiary, or pay a fine of not less than $100 nor more than $500, or both fine and imprisonment, in the discretion of the Court, for each offense. All such liquors, except when bought from a State officer authorized to sell the same, or in possession of one, are declared to be contraband and against the morals, good health and safety of the State, and may be seized wherever found, without warrant, and turned over to the State Commissioner.

PRESENT ACT.

SECTION 1. *Be it enacted* by the General Assembly of the State of South Carolina, That the manufacture, sale, barter or exchange, receipt or acceptance for unlawful use, delivery, storing and keeping in possession within this State of any spirituous, malt, vinous, fermented, brewed (whether lager or rice beer), or other liquors, any compound or mixture thereof by whatever name called or known, which contains alcohol and is used as a beverage, except as is hereafter provided, is hereby prohibited, under a penalty of not less than three nor more than twelve months at hard labor in the State penitentiary, or pay a fine of not less than $100 nor more than $500, or both and imprisonment, in the discretion of the Court, for each offense. All alcoholic liquors in this State, whether manufactured within this State or elsewhere, not having been tested by the chemist of the South Carolina College and found to be pure and free from poisonous, hurtful and deleterious matters, are hereby declared to be of a detrimental character, and their use and consumption are against the morals, good health and safety of the State, and all such liquors may be seized whenever found, without a warrant, and disposed of as hereinafter provided. Any person resident in this State intending to import for personal use and consumption any spirituous, malt, vinous, fermented, brewed, or other liquor containing alcohol from any other State or foreign country, shall first certify to the chemist of the South Carolina College the quantity and kind of liquor proposed to be imported, together with the name and place of business of the person, firm or corporation from whom it is desired to purchase, accompanying such certificate with a statement that the proposed consignor has been requested to

forward a sample of such liquor to the said chemist at Columbia, South Carolina. Upon receipt of said sample, the said chemist shall immediately proceed to test the same, and if found to be pure and free from any poisonous, hurtful or deleterious matters, he shall issue a certificate to that effect, stating therein the names of the proposed consignor and consignee, and the quantity and kind of liquor proposed to be imported thereunder, which certificate shall be dated and forwarded by said chemist, post paid, to the proposed consignor at his place of business. The said consignor shall cause such certificate to be attached to the package containing the liquor when it is shipped in this State, and no package bearing such certificate shall be liable to seizure and confiscation; but any package of spirituous, malt, vinous, fermented, brewed, or other liquor or liquid containing alcohol imported into this State without such certificate, or any package containing liquor other than described in the certificate thereto attached, or any package shipped by or to any person or persons not named in such certificate, shall be seized and confiscated as provided in this Act. Any certificate obtained from the chemist as herein provided, shall be used within sixty days after the date of its issue, and shall be invalid thereafter. It shall be unlawful to use said certificate for more than one importation, and any person attempting to counterfeit said certificate, or to make any improper use thereof, or who shall make any false statement in obtaining or attempting to obtain the same, shall be guilty of a misdemeanor, and, upon conviction, shall be punished by imprisonment for not less than thirty days nor more than twelve months, or to pay a fine of not less than $100 nor more than $1,000. Any person or persons convicted of selling or otherwise

unlawfully disposing of any liquor imported under the provision of this section, shall suffer double the punishment provided for a sale in violation of other provisions of this Act. All expenses incurred in enforcing the provisions of this section, including compensation for such assistant chemists as may be necessary to make prompt analysis and the express charges on samples shall be paid by the State Board of Control hereinafter provided for as an expense of the State Dispensary established by this Act. If the chemist of the South Carolina College shall willfully fail or refuse to make or have made an analysis of any sample sent to him in accordance with this section, he shall, upon conviction thereof before a Court of competent jurisdiction, be fined $100 for each offense.

SEC. 3. That the State Board of Control shall, at the expiration of the term of the present Commissioner, and at the expiration of every two years thereafter, appoint a Commissioner, which appointment shall be submitted to the Senate at its next session for its approval; said Commissioner shall be believed by the State Board of Control to be an abstainer from intoxicants, and shall, under such rules and regulations as may be made by the State Board of Control, purchase all intoxicating liquors for lawful sale in this State, and furnish the same to such persons as may be designated as dispensers thereof, to be sold as hereafter prescribed in this Act. Said Commissioner shall reside, and have his place of business, in the city of Columbia, in this State, and hold his office two years from his appointment, and until another be appointed in his stead. He shall be subject to removal for cause by the State Board of Control. He shall qualify and be commissioned the same as other State officers, and shall receive an annual salary of $2,500, payable at

SEC. 3. That the State Board of Control shall, at the expiration of the term of the present Commissioner, and at the expiration of every two years thereafter, appoint a Commissioner, which appointment shall be submitted to the Senate at its next session for its approval; said Commissioner shall be believed by the State Board of Control to be an abstainer from intoxicants, and shall, under such rules and regulations as may be made by the State Board of Control, furnish all intoxicating liquors for lawful sale in this State to such persons as may be designated as dispensers thereof, to be sold as hereafter prescribed in this Act. Said Commissioner shall reside and have his place of business in the city of Columbia, in this State, and hold his office two years from his appointment, and until another be appointed in his stead. He shall be subject to removal for cause by the State Board of Control. He shall qualify and be commissioned the same as other State officers, and shall receive an annual salary of $1,900, payable from the dispensary fund upon

the same time and in the same manner as is provided for the payment of the salaries of State officers. He shall be allowed a book-keeper, who shall be paid in the same manner a salary of $1,200; and such other assistants as in the opinion of the Board of Control may be deemed necessary. He shall not sell to the County dispensers any intoxicating or fermented liquors, except such as have been tested by the chemist of the South Carolina College and declared to be pure: Provided, That said Board of Control shall have authority to appoint such assistants as they may find necessary to assist the chemist of the South Carolina College in making the analyses required by this Act; and the said Board of Control may fix such reasonable compensation, if any, as they may deem proper for the services rendered by such chemist or such assistants. The State Commissioner shall deposit all amounts received by him from sales to County dispensers or others with the Treasurer of the State under such rules as may be made by the State Board of Control to insure the faithful return of the same, and the State Treasurer shall keep a separate account with said fund, from which the Commissioner shall draw from time to time, upon warrants duly approved by the chairman of said Board, the amount necessary to pay the expenses incurred in conducting the business. All rules and regulations governing the said Commissioner in the purchase of intoxicating liquors or in the performance of any of the duties of his office, where the same are not provided for by law, shall be prescribed by the State Board of Control. He shall, before entering upon the duties of his office, execute a bond to the State Treasurer, with sufficient sureties, to be approved by the Attorney General, in the penal sum of $25,000, for the faithful performance of the duties of his office. In all purchases the warrant of the State Board of Control. He shall be allowed a book-keeper, who shall be paid in the same manner a salary of $1,200, and such other assistants as in the opinion of the Board of Control may be deemed necessary. He shall not furnish to the County dispensers any intoxicating or fermented liquors, except such as have been tested by the chemist of the South Carolina College and declared to be pure and free from poisonous, hurtful, and deleterious matter: Provided, That said Board of Control shall have authority to appoint such assistants as they may find necessary to assist the chemist of the South Carolina College in making the analyses required by this Act; and the said Board of Control may fix such reasonable compensation, if any, as they may deem proper for the services rendered by such chemist or such assistants. Each County dispenser shall remit to the State Treasurer all moneys accruing to the State from the sale of liquors under such rules as may be prescribed by the State Board of Control, and the State Treasurer shall keep a separate account with said fund, from which the State Board of Control shall draw from time to time upon warrants, or in such manner as they may provide, the amount necessary to pay the expenses incurred in conducting the business. All rules and regulations governing the said Commissioner or County dispensers in the performance of any of the duties of his office, where the same are not provided for by law, shall be prescribed by the State Board of Control. The State Commissioner shall, before entering upon the duties of his office, execute a bond to the State Treasurer, with sufficient sureties, to be approved in the same manner as the bonds of other State officers, in the penal sum of $10,000, for the faithful performance of the duties of his office. In all purchases

duties of his office. In all purchases or sales of intoxicating liquors made by said Commissioner, as contemplated in this Act, the Commissioner shall cause a certificate to be attached to each and every package containing said liquors when the same is shipped to him from the place of purchase or by him to the County dispensaries, certified by his official signature and seal, which certificate shall state that liquors contained in said packages have been purchased by him for sale within the State of South Carolina, or to be shipped out of the State, under the laws of said State; and without such certificate, any package containing liquors which shall be shipped out of the State, or shipped from place to place within the State, or delivered to the consignee by any railroad, express company or other common carriers, or be found in the possession of any common carrier, shall be regarded as contraband, and may be seized without warrant, for confiscation, and such common carrier shall be liable to a penalty of $500 for each offense, to be recovered against said common carrier in any Court of competent jurisdiction by summons and complaint, proceedings to be instituted by the Solicitor of any Circuit with whom evidence may be lodged by any officer or citizen having knowledge or information of the violation; and any person attaching or using such certificate without the authority of the Commissioner, or any counterfeit certificate, for the purpose of securing the transportation of any intoxicating liquors out of or within this State, in violation of law, shall, upon conviction thereof, be punished by a fine of not less than $500, and imprisonment in the penitentiary for not less than one year for each offense.

or sales of intoxicating liquors made as contemplated in this Act, the State Board of Control shall cause a certificate to be attached to each and every package containing said liquors, when the same is shipped to the State Commissioner from the place of purchase, or by State Commissioner to the County dispensaries, certified by their official signatures and seal, which certificate shall state that liquors contained in said packages have been purchased by the State Board of Control for sale and use within the State of South Carolina, under the laws of said State, and shall also cause to be attached to all such liquors the certificate of the chemist of the South Carolina College that samples of the same have been tested as required by this Act; and without such certificates, any package containing liquors which shall be shipped from place to place within the State, or delivered to the consignee by any railroad, express company or other common carriers, or be found in the possession of any common carrier, shall be regarded as contraband, and may be seized without warrant for confiscation, and such common carrier shall be liable to a penalty of $500 for each offense, to be recovered against said common carrier in any Court of competent jurisdiction by summons and complaint, proceedings to be instituted by the Solicitor of any Circuit with whom evidence may be lodged by any officer or citizen having knowledge or information of the violation; and any person attaching or using such certificate without the authority of the State Board of Control, or any counterfeit certificate for the purpose of securing the transportation of any intoxicating liquors within this State in violation of law, shall, upon conviction thereof, be punished by a fine of not less than $500, and imprisonment in the penitentiary for not less than one year for each offense.

SEC. 15. No person, firm, association or corporation shall manufacture for sale, or keep for sale, exchange, barter or dispense any liquors containing alcohol, for any purpose whatsoever, otherwise than is provided in this Act. Any person, firm, association or corporation desiring or intending to manufacture or distill any liquors containing alcohol within this State shall first obtain from the State Board of Control a permit or license so to do, and it shall be unlawful for any such person, firm, association or corporation to manufacture or distill any liquors containing alcohol within this State without having such permit or license. Any violations of the terms of the permit or license shall authorize and warrant the seizure of the product on hand at any distillery or place where liquors containing alcohol are manufactured: Provided, The United States has no lien or claim upon the same. And in the application for a permit or license to manufacture liquors containing alcohol, the applicant shall give the State full power, upon any violation of this Act, to seize and take possession of any product on hand at the distillery or place where such applicant shall manufacture such liquors, and shall authorize the State to pay the United States Government the tax upon the same if unpaid, and to dispose thereof as provided herein for contraband goods. Dispensers as herein provided shall alone be authorized to sell and dispense liquors containing alcohol, and all permits must be procured by such dispensers as herein provided from the County Board of Control: Provided, That the manufacturers of distilled, malt or vinous liquors who are doing business in the State shall be allowed to sell to no person in this State except the State Commissioner and to parties outside the State, and the State Commissioner shall purchase

SEC. 15. No person, firm, association or corporation shall manufacture for sale, or keep for sale, exchange, barter or dispense any liquors containing alcohol for any purpose whatsoever, otherwise than is provided in this Act. Any person, firm, association or corporation desiring or intending to manufacture or distill any liquors containing alcohol within this State, shall first obtain from the State Board of Control a permit or license so to do. In the case of distillers such permit or license shall not be granted or renewed, except on petition signed in person by a majority of the resident freeholders in the city, town or township in which it is proposed to locate distillery. And it shall be unlawful for any such person, firm, association or corporation to manufacture or distill any liquors containing alcohol within this State, without having such permit or license. Any violations of the terms of the permit or license shall authorize and warrant the seizure of the product on hand at any distillery or place where liquors containing alcohol are manufactured: Provided, The United States has no lien or claim upon the same. And in the application for a permit or license to manufacture liquors containing alcohol, the applicant shall give the State full power, upon any violation of this Act, to seize and take possession of any product on hand at the distillery or place where such applicant shall manufacture such liquors, and shall authorize the State to pay the United States Government the tax upon the same if unpaid, and to dispose thereof, as provided herein for contraband goods. Every package, barrel or bottle of such liquor shipped beyond the limits of this State shall have thereon the certificate of the State Board of Control allowing same, otherwise it shall be liable to confiscation, and the railroad carrying it shall be punished

his supplies from the brewers and distillers in this State when their product reaches the standard required by this Act: Provided, Such supplies can be purchased as cheaply from such brewers and distillers in this State as elsewhere. And provided further, That the State Commissioner shall have the right, and he is hereby empowered, to purchase malt liquors from breweries of this State, and also from breweries outside of this State, who may have agents representing them in this State. Every package, barrel or bottle of such liquor shipped beyond the limits of this State shall have thereon the certificate of the State Commissioner allowing same, otherwise it shall be liable to confiscation, and the railroad carrying it shall be punished as in section 3: And provided, That any person shall have the right to make wine for his or her own use from grapes or other fruits. The inspector appointed by the State Board of Control, as herein provided, shall have the right to enter and examine, at any and all times not forbidden by the United States laws, any distillery, brewery or place where liquors containing alcohol is manufactured within this State. Any manufacturer, distiller or brewer who may refuse to allow the inspector to enter and examine his place of business and its appurtenances at such times as the inspector may deem proper shall forfeit his permit or license.

SEC. 23. The State Commissioner, under rules and regulations provided by the State Board of Control, may enter into contracts with responsible grape growers in this State for the sale of domestic wines through the Dispensary, so as to encourage grape growing in this State, and in furtherance of this object, not more than ten per cent. profit to the Dispensary over the expenses of bottling, labeling, freighting, etc., shall be charged for the

as in section 3: And provided, That any person shall have the right to make wine for his or her own use from grapes or other fruits. The inspector appointed by the State Board of Control, as herein provided, shall have the right to enter and examine, at any and all times not forbidden by the United States laws, any distillery, brewery or place where liquors containing alcohol is manufactured within this State. Any manufacturer, distiller or brewer who may refuse to allow the inspector or constable to enter and examine his place of busines and its appurtenances at such times as the inspector or constable may deem proper, shall forfeit his permit or license.

SEC. 23. The manager of every registered distillery of liquor in this State shall report quarterly to the State Board of Control, showing the number of gallons of each kind of liquor on hand, manufactured or disposed of during the quarter; and if the said report fail to correspond with the return of said distiller to the United States Revenue Collector of this State, or it is shown that said manager has disposed of liquor contrary to this Act, said distil-

handling of such wines. The manager of every registered distillery of liquor in this State shall report quarterly to the State Commissioner, showing the number of gallons of each kind of liquor on hand, manufactured or disposed of during the quarter; and if the said report fail to correspond with the return of said distiller to the United States Internal Revenue Collector of this State, or it is shown that said manager has disposed of liquor contrary to this Act, said distillery shall be deemed to be a common nuisance, and the said manager and his aiders and assistants and the premises shall be proceeded against as in this Act provided as to places where liquors are sold contrary to this Act.

SEC. 31. In all cases of seizure of any goods, wares or merchandise hereafter or heretofore made as being subject to forfeiture under any provision of this Act or the former Act, which, in the opinion of the officer or person making the seizure, are of the appraised value of $50 or more, the said officer or person shall proceed as follows: First. He shall cause a list containing a particular description of the goods, wares or merchandise seized to be prepared in duplicate and an appraisement thereof to be made by three sworn appraisers to be selected by him, who shall be respectable and disinterested citizens of the State of South Carolina, residing within the County wherein the seizure was made. Said list and appraisement shall be properly attested by the said officer or person and the said appraisers, for which service each of the said appraisers shall be allowed the sum of $1 per day, not exceeding five days, to be paid by the State Commissioner. Second. If the said goods are believed by the officer making the seizure to be of less value than $50, no appraisement shall be made. The said officer or person shall proceed to publish a notice

lery shall be deemed to be a common nuisance, and the said manager and his aiders and assistants and the premises shall be proceeded against as in this Act provided as to places where liquors are sold contrary to this Act.

SEC. 31. In all cases of seizure of any goods, wares, merchandise, or any other property, hereafter or heretofore made as being subject to forfeiture under any provisions of this Act or any former Act, which, in the opinion of the officer or person making the seizure, are of the appraised value of $50 or more, the said officer or person shall proceed as follows: First. He shall cause a list containing a particular description of the goods, wares or merchandise seized to be prepared in duplicate, and an appraisement thereof to be made by three sworn appraisers to be selected by him, who shall be respectable and disinterested citizens of the State of South Carolina, residing within the County wherein the seizure was made. Said list and appraisement shall be properly attested by the said officer or person and the said appraisers, for which service each of the said appraisers shall be allowed the sum of $1 per day, not exceeding five days, to be paid by the State Board of Control. Second. If the said goods are believed by the officer making the seizure to be of less value than $50, no appraisement shall be made. The said officer or per-

for three weeks, in writing, at three places in the County where the seizure was made, describing the articles and stating the time and place and cause of their seizure, and requiring any person claiming them to appear and make such claim within thirty days from the date of the first publication of such notice. Third. Any person claiming the liquors so seized as contraband, and the vessels containing the same, within the time specified in the notice, may file with the State Commissioner a claim, stating his interest in the articles seized, and may execute a bond to the State Commissioner in the penal sum of $500, with sureties, to be approved by the said State Commissioner, conditioned that in the case of condemnation of the articles so seized, the obligors shall pay all the costs and expenses of the proceedings to obtain such condemnation; and upon the delivery of such bonds to the State Commissioner, he shall transmit the same with the duplicate list or description of the goods seized to the Solicitor of the Circuit in which such seizure was made, and the said Solicitor shall prosecute the case to secure the forfeiture of said contraband liquors or liquids in the Court having jurisdiction. Fourth. If no claim is interposed and no bond given within the time above specified, such liquors shall be forfeited without further proceedings, and the State Commissioner shall have the said liquors tested by the State chemist, and if pure, shall sell the same through the State Dispensary as though purchased by him. If not pure, he shall sell the same beyond the State and deposit the proceeds to the credit of the State Commissioner: Provided, That in seizures in quantities less in value than $50 of such illicit liquor or liquors, the same may be advertised with other quantities at Columbia by the State Commissioner and disposed of as hereson shall proceed to publish a notice for three weeks, in writing, at three places in the County where the seizure was made, describing the articles and stating the time and place and cause of their seizure, and requiring any person claiming them to appear and make such claim within thirty days from the date of the first publication of such notice. Third. Any person claiming the liquors or other property so seized as contraband within the time specified in the notice, may file with the State Board of Control a claim stating his interest in the articles seized, and may execute a bond to the State Board of Control, in the penal sum of $500, with sureties, to be approved by the said State Board of Control, conditioned that in the case of condemnation of the articles so seized, the obligors shall pay all the costs and expenses of the proceedings to obtain such condemnation; and upon the delivery of such bonds to the State Board of Control, he shall transmit the same with the duplicate list or description of the goods seized to the Solicitor of the Circuit in which such seizure was made, and the said Solicitor shall prosecute the case to secure the forfeiture of said contraband liquors or liquids in the Court having jurisdiction. Fourth. If no claim is interposed and no bond given within the time above specified, such liquors shall be forfeited without further proceedings, and the State Commissioner shall have the said liquors tested by the State chemist, and if pure, shall furnish the same through the State Dispensary. If not pure, the same shall be destroyed by the chemist of the South Carolina College, who shall make a report to the State Board of Control of the amount and kinds of liquors so destroyed: Provided, That in seizures in quantities less in value than $50 of such illicit liquors or liquids, the same may be advertised with other quantities at

inbefore provided: Provided, further, That the claimants of such liquors may give bond in $100 as when the value is $50 or over, and shall bear the burden of showing before a Trial Justice that he has complied with the law and that the liquor is not liable to seizure.

Columbia by the State Board of Control, and disposed of as hereinbefore provided: Provided, further, That the claimants of such liquors may give bond in $100 as when the value is $50 or over, and shall bear the burden of showing before a Magistrate that they have complied with the law, and that the liquor is not liable to seizure.

A comparison of these sections shows that the Act with which we are now dealing is radically different from that upon which the decision in *Donald* v. *Scott* was rendered. The former Act provided that all intoxicating liquors, "except when bought from State officers authorized to sell the same, or in possession of one, are declared to be contraband and against the morals, good health and safety of the State, and may be seized wherever found, without warrant, and turned over to the State Commissioner." As I construe the decision of the Court, it was largely in view of this standard that the Act was condemned. Speaking of it, Mr. Justice Shiras, delivering the opinion of the Court, said: "The prohibition of the importation of wines and liquors of other States by the citizens of South Carolina for their own use is made absolute, and does not depend on the purity or impurity of the article. Only the State functionaries are permitted to import into the State, and those citizens who wish to use foreign wines and liquors are deprived of the exercise of their own judgment and taste in the selection of commodities."

The second objection taken by the Court was that the Act discriminated in some of its provisions against the citizens and products of other States in favor of the citizens and products of South Carolina. Referring to this discrimination, the Court said: "The fifteenth section enacts that any person, firm, association, or corporation desiring or intending to manufacture or distill any liquors containing alcohol within the State, shall first obtain from the State Board a permit or license to do so; and said section further provides that manufacturers of distilled, malt or vinous liquors who are doing business within this State shall be allowed to sell to no person in this State except the State Commissioner and to parties outside the State; and the State Commissioner shall purchase his supplies from the brewers

and distillers in this State when their product reaches the standard required by this Act: Provided, Such supplies can be purchased as cheaply from such brewers and distillers in this State as elsewhere." So, too, the twenty-third section provides that "The State Commissioner may enter into contract with responsible grape growers in this State for the sale of domestic wines through the Dispensary, so as to encourage grape growing in this State; and in furtherance of this object not more than ten per cent. profit to the Dispensary over the expense of bottling, labeling, freighting, &c., shall be charged for the handling of such wines." But there is no such limitation of charge in the case of imported wines. And in case of seizure of contraband liquors, the thirty-first section provides that "the State Commissioner shall have the same tested by the State Chemist, and, if pure, shall sell the same through the State Dispensary as though purchased by him; and, if not pure, he shall sell the same beyond the State; and deposit the proceeds to the credit of the State Commissioner."

The grounds of objection, therefore, to the Act were the standard by which the legality or illegality of the liquors was determined; and, second, the discrimination made against foreign products. Upon these grounds the Court held that so much of the Dispensary law as prohibited the importation of liquors into the State of South Carolina for personal use and consumption, was invalid. The opinion was confined to these provisions, and after reviewing the cases, Mr. Justice Shiras said: "In the light of these cases, the Act of South Carolina, of January 2, 1895, must, *as to those of its provisions affecting the plaintiff in the present suit*, stand condemned."

He further said: "It is sufficient for the present case to hold, as we do, that if the State recognizes the manufacture, sale, and use of intoxicating liquors as lawful, it can not discriminate against the bringing of such articles in, and in importing them from other States; that such legislation is void as a hindrance to interstate commerce and an unjust preference of the products of the enacting State as against similar products of other States." If the Act of 1895 had been as it now stands, might not the result have been different? By subsequent amendments the ob-

jectionable features have been removed. The standard by which the legality or illegality of the liquor is determined, is not in whose hands it is found, but whether it has been tested by the chemist, and found to be pure and free from poisonous, hurtful, and deleterious matters.

By reference to sections 15, 23 and 31, as hereinbefore quoted, it will be observed that the discriminations referred to in *Donald* v. *Scott* have been eliminated, and the Act as it now stands is free from such discriminating features. By comparing sections 1 and 3 of the present Act, it will be observed that liquors sold from the Dispensary and those imported by citizens for personal use under the Act are required to undergo the same test. In each instance, before liquors are permitted to be shipped into the State, samples thereof must be tested by the chemist of the South Carolina College and certified to be free from poisonous, hurtful, and deleterious matters. Therefore, if we were considering the Act from the standpoint of a citizen of South Carolina, desiring to import liquors into the State for his personal use and consumption, we might urge that the defects in the Act of 1895 have been cured by amendment. But this is not incumbent upon us here. We are to consider the Act as it affects the alleged right of non-resident manufacturers and liquor dealers to import their products into the State of South Carolina, and there store and sell the same in unbroken packages of one-half pint, one pint, one quart, and the like.

II.

The Dispensary Law, in so far as it prohibits non-resident manufacturers and liquor dealers from importing their product into the State of South Carolina and there selling the same, is a valid exercise of the police power of the State.

The Circuit Court of the United States, in the case now under consideration, construed the decision of this Court in *Scott* v. *Donald* as establishing not only the right of a citizen of South Carolina to purchase liquors in another State and import them for personal use, but also the right of a non-resident manufacturer or dealer to ship his products into the State, and there store and sell the same in unbroken packages, either himself or

through an agent, which agent might be a citizen of South Carolina. That the one proposition is the corollary of the other, is the conclusion against which we protest.

If the principle has been established by this Court that nothing short of total prohibition will close the markets of a State to the so-called "original package" dealers, and that principle is to be adhered to, further argument of this question is useless. But we can not so construe the decisions. That such is the theory of the Circuit Court, however, is beyond question. In the opinion in this case, his Honor, the Circuit Judge, says:

"Any State may, in the exercise of the police power, declare that the manufacture, sale, barter, and exchange, or the use as a beverage of alcoholic liquors, are public evils, and, having thus declared, can forbid such manufacture, sale, barter, and exchange, or use within her territory. But when a State recognizes and approves the manufacture, sale, barter, and exchange, and the use as a beverage of alcoholic liquors, and the State itself encourages the manufacture, engages in the sale of, and provides for the consumption of alcoholic liquors as a beverage, and so precludes the idea that such manufacture, sale, barter, exchange, or use are injurious to the public welfare, it is not a lawful exercise of the police power to forbid the importation of such liquors or their sale in original packages for personal use and consumption." (Transcript of Record, folio 45.)

Again: "It is clear that before the State can forbid the importation and sale in original packages of alcoholic liquors, it must declare the manufacture, sale and use as a beverage of all alcoholic liquors to be contraband and forbidden, and so take them out of the category of legitimate articles of commerce." (Transcript of Record, folio 55.)

Again: "If all alcoholic liquors, by whomsoever held, are declared contraband, they cease to belong to commerce and are within the jurisdiction of the police power; but so long as their manufacture, purchase or sale, or their use as a beverage in any form or by any person, are recognized, they belong to commerce, and are without the domain of the police power. The Act of 1897, like the Act of 1895, is condemned on these principles.

Neither of them is within the exercise of the police power." (Transcript of Record, folio 55.)

If the last quoted view be correct, the Wilson Act has been adjudicated out of existence, and the police power of the States rendered powerless to grapple with the liquor evil in any manner other than by total prohibition. To hold that articles within commerce "are without the domain of the police power," is to expand and extend any doctrine heretofore announced by this Court. The possibility of such a condition attracts the attention of every State in this Union whose laws regulate the liquor traffic. It threatens the destruction of every system of regulation short of prohibition. It alarms the advocates of the right of the States to regulate and control the manner in which liquor shall be sold in their markets.

The decision in *Scott* v. *Donald* furnishes no adequate support for such a theory. It is true that, referring to the Act of 1895, the Court said: "It is not a law purporting to forbid the importation, manufacture, sale and use of intoxicating liquors as articles detrimental to the welfare of the State and to the health of the inhabitants, and hence it is not within the scope and operation of the Act of Congress of August, 1890." We cannot believe the Court meant by this to hold that only a prohibitory law would be within the Wilson Act. Especially is this true, when we read further in the opinion: "The question whether a given State law is a lawful exercise of the police power is still open, and must remain open to this Court. Such a law may forbid entirely the manufacture and sale of intoxicating liquors, and be valid; *or it may provide equal regulations for the inspection and sale of all domestic and imported liquors, and be valid.* But the State cannot, under the Congressional legislation referred to, establish a system which, in effect, discriminates between interstate and domestic commerce in commodities to make and use which are admitted to be lawful." The doctrine announced then, was *uniformity of regulation* and not *prohibition*, as a test of validity. This is the principle for which we contend, and it affords no authority for the position taken by the Circuit Court.

Unless it can be shown that the Dispensary law, in forbidding the sale of liquors by non-resident dealers, discriminates against

the citizens and products of other States in favor of citizens and products of South Carolina, it must be sustained. The only discrimination found by the Circuit Court in the present Act is referred to as follows: "But whilst it is true that some of the discriminating features are now removed from the Dispensary—features admitted to be fatal to its constitutionality—one, at least, still remains. The markets of this State are closed to the producers in other States. *Minnesota* v. *Barber*, 136 U. S., 326. They are closed, it is true, to the producers in this State, but the latter may be under the control of the laws of commerce within the State. The former are protected by the interstate commerce law. It is no justification that laws in conflict with interstate commerce press equally on the citizens and the stranger. *Minnesota* v. *Barber*." (Transcript of Record, folio 55.)

If we were dealing with some commodity other than intoxicating liquors, the case of *Minnesota* v. *Barber* might have some reasonable application. It is true, the Court in that case said: "A burden imposed by a State upon interstate commerce is not to be sustained simply because the statute imposing it applies alike to the people of all the States, including the people of the State enacting such statute." In applying this to the case at bar, the Circuit Court, evidently, overlooked the Wilson Act, the very purpose of which was to subject interstate and domestic commerce in liquors to the same restrictions. To this extent the Wilson Act differentiates intoxicating liquor from all other articles of commerce, and expressly takes liquor out of the principle announced in *Minnesota* v. *Barber*, just quoted. Referring to that Act, this Court in *Scott* v. *Donald* said: "That law was not intended to confer upon any State the power to discriminate injuriously against the products of other States in articles whose manufacture and use are not forbidden, and which are, therefore, the subjects of legitimate commerce. When that law provided that 'all fermented, distilled or intoxicating liquors transported into any State or Territory, remaining therein for use, consumption, sale or storage therein, should upon arrival in such State or Territory be subject to the operation and effect of the laws of such State or Territory enacted in the exercise of its police power, to the same extent and in the same manner as though such liquids

or liquors had been produced in such State or Territory, and should not be exempt therefrom by reason of being introduced therein in original packages or otherwise,' evidently equality or uniformity of treatment under State laws was intended."

"*Equality or uniformity of treatment under State laws was intended.*"

The Circuit Court says one discriminating feature in the Dispensary law remains, to wit: "The markets of the State are closed to the producers in other States," and in the very next sentence, "They are closed, it is true, to the producers in this State." Pray, where is the discrimination? Then, if the doctrine of *Minnesota* v. *Barber* can not be applied to this case without ignoring the Wilson Act or adjudicating it out of existence, how is the conclusion of the Circuit Court reached?

We challenge the counsel on the other side to point out any section in the present Dispensary Law that discriminates directly or indirectly against the producer of liquors in another State. In all of these hearings much has been said about the law being discriminating "in its effect." Glittering generalities have been largely indulged in, but no particular section in the present law has been designated upon which to condemn it. Neither has it been fairly shown how the reasonable effect of the law, as a whole, is to discriminate against any non-resident producer. They say, "the markets of the State are closed to him." Are they not closed to the resident producer also? They say they "can sell their products to the State Board of Control only." Can the resident producer do more? They say if the State Board refuses to buy their goods, they have no market in South Carolina. Is not the resident producer in the same condition?

In the argument of *Scott* v. *Donald* in this Court the counsel on the other side said South Carolina had enacted a policy of "South Carolina liquor for South Carolinians," and that one purpose of the Dispensary law was to develop the liquor industries of the State by selling their product to the exclusion of the products of other States. He has repeated the statement many times since, and will probably do so here. This is like many other sweeping statements that have been made in these proceedings. It is an effort to create a false issue to bolster the un-

tenable position he occupies. The fact is, that less than twelve per cent. of the liquor bought and sold by the State Board of Control is the product of South Carolina. The report of the Board shows that from June 30, 1896, to June 30, 1897, the total liquor purchases of the State amounted to $938,558.69, of which only $68,864.85 was paid for liquors manufactured in South Carolina. The report of the United States Commissioner of Internal Revenue for the same period shows that the total liquor product of South Carolina was only 57,548 gallons. There are within the State about twenty-seven distilleries. There are two breweries which, according to the report of the Revenue Commissioner, had an output in 1896–97 of 8,400 barrels of beer. Only this small quantity of liquor being produced in South Carolina, the State Dispensary must look elsewhere for its supplies. The policy is not "South Carolina liquor for South Carolinians," but rather *pure liquor for South Carolinians, sold under such restrictions as will reduce to a minimum the evil.* The State Board of Control purchases in the open markets of the world, their only restriction being that they must purchase and furnish to County Dispensers liquors that are pure and free from poisonous, hurtful or deleterious matter. The law excludes no dealer or class of dealers. All are allowed to compete for the business, and those who fail to secure it, by reason of inferior goods or higher prices, can find nothing in the Act of which to complain. Suppose the non-resident dealer who claims that he is discriminated against, because the State Board does not purchase his liquors, should go into any State where a License Board exists, whose province and duty it is to say who shall sell liquor and where it shall be sold, and, upon applying for license, the License Board should determine that he was not a suitable person to be licensed, that his liquors were inferior and injurious, or that the place where he proposed to sell was not a place where liquors should be sold, would he not be excluded from that market? Such is the condition in a number of States. Are their laws invalid? Does the exercise of a discretion by which a foreign product may be affected invalidate any system of regulation? Discretion must be lodged somewhere, and so long as that discretion is exercised fairly as to both foreign and domestic

products, it must be sustained, whether exercised by a License Board granting or refusing license, or by a Board of Control with purchasing and dispensing power. This was conceded by the counsel on the other side in a recent argument before the Judiciary Committee of the House of Representatives, when he said: "My position is this: That if the State law provides a system of absolute prohibition—none sold at all—it is valid (!); and if the State law provides a system of equal privileges, equal regulations for the sale of all domestic and imported liquor, it is equally valid, whether the State makes a general provision of law or takes the control of liquor to herself and makes herself the sole monopolist." We trust the counsel will adhere to the same proposition here, and, assuming that he will, we challenge him to point out to the Court any way in which the Dispensary law fails to provide "a system of equal privileges, equal regulations for the sale of all domestic and imported liquors." He has failed to do so heretofore, and his Honor, the Circuit Judge, has not done so.

The only real discrimination now existing in this matter is one created by the decision of the Circuit Court itself as a result of this case and those immediately following it. The effect of the Circuit Court's decision is to give to a non-resident the right to sell liquors in South Carolina in so-called "original packages" and deny that right to citizens of the State. The non-resident may come into the State and store a stock of liquors and expose them for sale and sell them at a regular place of business. Many such places are now in operation. It goes even further, and permits a citizen of South Carolina, as agent for any non resident dealer, to sell unmolested, while his neighbor cannot do so. The appointment as agent of a non-resident liquor dealer confers on any citizen a right superior to the laws of his State. As an individual, he is bound by the criminal statutes of the State, and for a violation of them may be convicted and punished, but as agent for the non-resident liquor dealer, he is exempt from indictment and may disregard, with impunity, the law that binds his neighbor. Citizens of other States and their agents are thus given rights in South Carolina that are not exercised by South Carolinians, and to this end the aid of a Court of Equity was

successfully invoked. So much as to discrimination between citizens.

Now as to products: The liquor products of South Carolina must be sold to the State or find a market elsewhere. No manufacturer of liquor in this State can sell directly to the consumer here. But the liquor products of other States may come into South Carolina and be sold directly to the consumer in quantities of one-half pint, one pint, and the like, and the same law that prohibits the sale by a resident manufacturer is powerless to prevent the importation and sale of the foreign product.

According to the theory of the Circuit Court, the former are "under the control of the laws of commerce within the State," while the latter "are protected by the interstate commerce law." The Circuit Court has given us a system of discrimination against the citizens and products of South Carolina in favor of the citizens and products of other States. In the name of reason, I ask, where is the Wilson Act? Where is the "equality or uniformity of treatment" which this Court says was intended by that Act?

The theory upon which the Circuit Court established this condition of affairs is evidently new to that Court. Such views do not seem to have been entertained by his Honor, the Circuit Judge, until after the decision in *Scott* v. *Donald*, and they were announced for the first time in the case now under consideration. In the case of *Ex parte Loeb*, 72 Fed. Rep., 658, the Circuit Court said: "There can be no doubt that the State, under its police power, can control and regulate the liquor traffic, either by prohibiting it altogether or by permitting its sale only on certain prescribed limitations and conditions. Nor can this power be controlled by any law of the United States. The importation of liquor in this State, and its sale in this State, either to importer or to any one else, come within this provision. And as the State has forbidden it, such sale is illegal and void. So, even, when one imports for his own use and consumption, if the packages come C. O. D., or to order notify, or under a bill of lading attached to a draft, or in any other way by which the price is paid on or as a condition of the delivery of the goods in this State, this is unlawful, and the sale thus consummated is void."

In *Ex parte Gonzales*, 76 Fed. Rep., 559, the Circuit Court said: "In the opinion just filed (76 Fed., 554), it has been shown that liquor imported from another State, or from a foreign country, for the personal use of the importer, is protected by the interstate commerce law, and that this protection is continued over the importation after its arrival, so long as this personal use and consumption continues. If, however, this personal use and consumption cease, the protection ceases also. In the present case, Mr. A. E. Gonzales imported for his own use two packages. One continued in his own use and for his own consumption. The other did not, he gave it away. The police law of this State forbids this. Indeed, if packages could be imported by any one for his own use, and, after arrival, could be given to others, there could be no limit to the number so imported by one person, or to that of the recipients after they were imported. The protection of the interstate commerce law is a personal privilege. It can not be transferred to another person, and give to him the protection given to the importer, only because he actually imported the goods.

This view was reiterated by the Circuit Court in charging the jury in the case of *Beckroge* v. *Harling et al.*, tried in 1897. His Honor said: "Another thing, gentlemen, I have forgotten. The learned Attorney General has insisted that this liquor was not for the personal use of Beckroge, because he bought it for his wedding feast, and he has quoted as authority the case of Gonzales, in Columbia, which, he thinks, states his position. He is in error. I held in the Gonzales case that it was the privilege of every citizen to import liquor for his own personal use. He had no right to import for the personal use of others. In that case he imported two five-gallon demijohns of whiskey, and he gave one to his brother, but he had no right to import that for his brother.

"What do you mean by personal use? If the foreman of the jury were to import a case of claret and put it on his table for his use and that of his family and guests, is not that his personal use? And if Beckroge bought these liquors for himself, his bride and his guests, I think that he can be said to have bought it for his own personal use. The distinction between the two

cases was this: Gonzales brought in two packages, one for his own personal use and the other he sent to his brother. I held that it was a personal privilege that he could only exercise for himself. The true meaning of personal use is this: He must not import it for the purpose of selling it or parting with it to anybody else in violation of the laws of the State, but so long as he treats it as his personal liquor, it is no departure from the personal use to invite his friends in enjoying it any more than to take a friend up to your sideboard and give that friend a glass of whiskey from your decanter, would not be a case of personal use."

His Honor further said, in charging the jury in *Beckroge* v. *Harling et al.*: "In view of one of the requests to charge, I will say here that it makes no difference whether the importation was by a citizen of the United States other than the State of South Carolina, or by a citizen of the State of South Carolina, because if it should turn out that the citizen of South Carolina has the right to import liquors into the State of South Carolina, by the Constitution of the United States, every citizen of the United States is clothed with exactly the same privilege that a citizen of the State of South Carolina is clothed with." After holding that "every citizen of the United States is clothed with exactly the same privilege that a citizen of the State of South Carolina is clothed with," we find the decisions of the same Court giving to citizens of other States rights and powers in South Carolina that are denied to citizens of South Carolina. With the greatest respect, we say the interstate commerce law, as construed by his Honor, is destructive of equality and subversive of reason, if this be the consequence of it.

A detailed review of all the cases discussing the relations between the police power of the States and the interstate commerce clause of the Federal Constitution is useless here. This Court has repeatedly reviewed the earlier cases and deduced from them certain fixed principles by which we must be guided. *Plumley* v. *Massachusetts*, 155 U. S., 471; *Emert* v. *Missouri*, 156 U. S., 296; and *Scott* v. *Donald*, 165 U. S., 58, furnish recent discussions of the question.

The principles announced in these cases, together with the

Act of Congress of August, 1890, must control this case. His Honor, the Circuit Judge, seems to have relied on his construction of the decision of this Court in *Scott* v. *Donald*. In the case of *Moore* v. *Bahr*, 82 Fed. Rep., 20, the Circuit Court said: "In *Donald v. Scott*, 67 Fed. Rep., 854, a full discussion of the relations between the Dispensary Acts and the law of interstate commerce was had, and the decision was reached that, under the protection of the interstate commerce law, any resident of this State could, notwithstanding the Dispensary Acts, import liquors for his own use and consumption. This decision has been sustained by the Supreme Court of the United States in *Scott* v. *Donald*, 165 U. S., 58, 17 Sup. Ct., 262. In the *Vandercook* case (recently heard and decided in this Court), 80 Fed. Rep., 786, following the Supreme Court in *Scott* v. *Donald*, it was held that a producer of wines and other liquors in California had a right to import and sell in this State his products in original packages."

We respectfully repeat our proposition that the Circuit Court did not follow the Supreme Court in *Scott* v. *Donald*.

Principle announced by Supreme Court in *Scott* v. *Donald:*

"The question whether a given State law is a lawful exercise of the police power is still open, and must remain open, to this Court. Such a law may forbid entirely the manufacture and sale of intoxicating liquors, and be valid; or it may provide equal regulations for the inspection and sale of all domestic and imported liquors, and be valid."

Principle announced by Circuit Court in *Vandercook* v. *Vance:*

"If all alcoholic liquors, by whomsoever held, are declared contraband, they cease to belong to commerce and are within the jurisdiction of the police power; but so long as their manufacture, purchase or sale, or their use as a beverage in any form or by any person are recognized, they belong to commerce and are without the domain of the police power."

The case of *Scott* v. *Donald* having been instituted by a citizen of South Carolina to enforce his right to import liquors for his personal use, this Court said, after reviewing a number of cases: "In the light of these cases, the Act of South Carolina of January 2, 1895, must, *as to those of its provisions which affect the plaintiff in the present suits*, stand condemned. So its application was limited. But, even considering the principle of the decision as relating to the rights of non-resident liquor producers, it goes no further, and could, under the Wilson Act, go no fur-

ther, than to hold that uniformity of treatment is demanded. Under that decision, although the State law recognizes the manufacture, purchase, and sale of intoxicating liquors, and their use as a beverage, if it provides equal regulations for the sale of domestic and imported liquors, it is valid. If "equality or uniformity of treatment" of domestic and foreign liquors is established, the terms of the Wilson Act are complied with, and the law must be sustained, for the very purpose and effect of that Act is to require only such uniformity. The State is thus left to enact, as to liquor, any system she pleases, so long as it applies alike to domestic and imported products. That the one "may be under the control of the laws of commerce within the State," while the other "are protected by the interstate commerce law," is a proposition entirely subversive of the theory of the Wilson Act.

The present Dispensary Law discriminates against nobody, either in terms or by natural operation, and is, therefore, a valid exercise of the police power, binding on the wine seller of California as it is on the citizen of South Carolina.

III.

We submit that the State may prohibit the storing and keeping in possession for sale within her borders of alcoholic liquors in original packages or otherwise, and that such prohibition is a valid exercise of her police power, and is not a regulation of interstate commerce.

That the character of intoxicating liquors warrants the prohibition of their storing, is practically without question. In the case of *State* v. *Winters et al.* (Kan.), 25 Pac. Rep., 235, the Court said: "It has seldom, if ever, been considered in any civilized country that the same freedom with respect to the traffic in and the use of intoxicating liquors should be allowed, as is freely permitted with respect to nearly all the other kinds of property subject to traffic or use. Intoxicating liquors are never considered as coming within the category of the necessaries of life, nor even as good or wholesome food or drink, or proper articles for general consumption. They are never considered like wheat or corn, or boots or shoes, or any of the other harm-

less articles of traffic of use which need no regulation nor restriction. They are considered almost as outlaws. In their unrestricted sale and use, they are pernicious, deleterious, baneful. They operate as tempters and seducers, alluring people into vice and crime, and constitute a perpetual menace and threat against the peace and quiet, good order and welfare of society. Their proper classification would rather be with such dangerous articles as dynamite, nitroglycerine, venomous reptiles, dangerous animals, poisons, articles containing the germs of infectious diseases, and 'infernal machines,' than with any of the harmless or innocent articles of commerce. Hence, in all civilized countries, they are considered as the proper subject of regulation, restriction, and, to some extent, prohibition; and all this has generally been considered as coming within the proper scope of the police power of the several states or governments."

In *Leisy* v. *Harden*, 135 U. S., 100, this Court held that: "The right of importation of ardent spirits, distilled liquors, ale and beer from one State into another, includes, by necessary implication, the right of sale in the original packages at the place where the importation terminates." See *Lyng* v. *Michigan*, 135 U. S., 166.

However, it has never been held that the right to import and sell in consequence of importation implies the right to store and offer for sale at a regular place of business. The moment the liquors are stored and exposed for sale they cease to be articles of commerce, the jurisdiction of the Federal Court over them terminates, and they become subject to State laws, as a part of the common mass of property in the State.

In the case of *Pittsburg Coal Co.* v. *Bates*, 156 U. S., 588, the Court said: "So long as Congress does not pass any law to regulate commerce among the several States, it thereby indicates its will that commerce shall be free, and any regulation upon the subject by the States is repugnant to such freedom. Thus, as observed Mr. Justice Strong: 'It seems hardly necessary to argue at length that, unless the statute can be justified as a legitimate exercise of the police power of the State, it is an usurpation of the power vested exclusively in Congress. It is a plain regulation of interstate commerce, a regulation extending to prohibi-

tion. Whatever may be the power of a State over commerce that is completely internal, it can no more prohibit or regulate that which is interstate than it can that which is with foreign nations.'

"Such being the recognized law, the question arose before the Court in the case of *Brown* v. *Houston*, whether the assessment of the tax upon the coal in question in the barges afloat amounted to any interference with or restriction upon the free introduction of the plaintiff's coal, from the State of Pennsylvania to the State of Louisiana. In other words, whether the tax amounted to a regulation or restriction upon commerce of the States, or only to the exercise of local administration under the general taxing power, which, though it may incidentally affect the subjects of commerce, is entirely within the power of the State until Congress shall see fit to interfere, and make express regulations on the subject, and that is one of the precise questions in the present case. And it was held that as to the character and mode of the assessment, it was not a tax imposed upon the coal as a foreign product, or as the product of another State than Louisiana, nor a tax imposed by reason of the coal being imported or brought into Louisiana, nor a tax imposed whilst it was in a state of transit through that State to some other place of destination. It was imposed after the coal had arrived at its place of destination and was put up for sale. The coal had come to its place of rest for final disposal or use, and was a commodity in the market of New Orleans. It might continue in that condition for a year, or two years, or only for a day. It had become a part of the general mass of property in the State, and as such it was taxable for the current year, as all other property in the city of New Orleans was taxable. Under the law it could not be taxed again until the following year. It was subjected to no discrimination in favor of goods which were the products of Louisiana. It was treated exactly in the same manner as such goods were treated.

"And the Court held that it could not be seriously contended—at least, in the absence of any congressional legislation to the contrary—that goods which are the product of other States are to be free from taxation in the State to which they might be

carried for use or sale. And it may be added, that the correct rule is for the assessor or tax collector to assess all property found within his jurisdiction, being there for the purpose of remaining till used or sold, and constituting part of the great mass of the general property of the country—provided, always, that the assessment does not discriminate between the products of the different States.

"And the Court further observed that it saw no conflict in that case, either in the law itself or in the proceedings which had been had under it and sustained by the State tribunals, nor any conflict with the general rule that a State can not pass a law which shall interfere with the unrestricted freedom of commerce between the States.

"The decision of the Court in *Brown* v. *Houston*, thus rendered, seems to be conclusive of the case now before the Court. The property in this case, as in that, still belongs to the original owners in Pennsylvania, but is brought on the navigable waters of the United States in boats and barges to Louisiana for purposes of sale, and is subject to taxation and sale as any other property of the citizens of the United States is subject when it becomes incorporated into the bulk of the property of the country, unless there be some special exemption set forth why it should not be thus taxed and sold, of which there are none here."

See *Brown* v. *Houston*, 114 U. S., 632.

The police power and the taxing power are in many respects identical, and they are, in all respects, subject alike to the limitations of the Federal Constitution as to interstate commerce.

See Prentice on Police Powers, p. 361.

Cooley on Taxation, p. 94, says: "The Federal Constitution also provides that Congress shall have power to regulate commerce with foreign nations, and among the several States, and with the Indian tribes.

"The Constitution, and the laws and treaties made in pursuance thereof, being supreme over all the States, any exercise of State power, whether by taxation or otherwise, in conflict therewith, must be void. In most imports this power over commerce is exclusive to the extent to which it is conferred, so that a regulation by a State of foreign or interstate commerce would be void.

"A tax distinctly laid on the commerce that comes under the regulation of Congress is void, even though Congress has refrained from legislating on the subject. * * * An importer's sales are exempt from State taxation, because he purchases, by the payment of the duty, a right to dispose of the merchandise as well as to bring it into the country; and the tax, if it were admissible, would intercept the import as an import on the way to becoming incorporated with the general mass of property, and would deny it the privilege of becoming so incorporated until it should have contributed to the revenue of the State. Property which constitutes a part of the general mass of property of a State is taxable, though it may have been, or may be designed to be, the subject of commerce, under congressional regulation. We have seen already that goods imported under the laws of Congress may be taxed by the States with other property when they have passed from the importer's hands, or have become a part of the general property of the State by the breaking up of the packages."

Mr. Cooley further says, on page 586: "There are some cases in which levies are made and collected under the general designation of taxes, or under some term employed in revenue laws to indicate a particular class of taxes, where the imposition of the burden may fairly be referred to some other authority than to that branch of the sovereign power of the State under which the public revenues are apportioned and collected. The reason is, that the imposition has not for its object the raising of revenue, but looks rather to the regulation of relative rights, privileges and duties as between individuals, to the conservation of order in the political society, to the encouragement of industry, and the discouragement of pernicious employments. Legislation for these purposes, it would seem proper to look upon as being made in the exercise of that authority which is inherent in every sovereignty, to make all such rules and regulations as are needful to secure and preserve the public order, and to protect each individual in the enjoyment of his own rights and privileges by requiring the observance of rules of order, fairness and good neighborhood, by all around him. *This manifestation of the sovereign authority is usually spoken of as the police power.*"

In the case of *Eilenbecker* v. *Plymouth County*, 134 U. S., 31, this Court sustained a statute of the State of Iowa, providing substantially the same method as section 22 of the Dispensary Act for abating as a nuisance places where alcoholic liquors are are stored and kept for sale.

Section 1543 of the Code of Iowa, as amended by c. 143 of the Acts of the twentieth General Assembly, is as follows: "Section 1543. In case of violation of the provisions of either of the three preceding sections or of section 1525 of this chapter, the building or erection of whatever kind, or the ground itself in or upon which such unlawful manufacture or sale, or keeping with intent to sell, use or give away, of any intoxicating liquors, is carried on or continued or exists, and the furniture, fixture, vessels, and contents, is hereby declared a nuisance, and shall be abated as hereinafter provided, and whoever shall erect or establish, or continue, or use any building, erection or place for any of the purposes prohibited in said section, shall be deemed guilty of a nuisance, and may be prosecuted and punished accordingly, and upon conviction shall pay a fine of not exceeding one thousand dollars and costs of prosecution, and stand committed until the fine and costs are paid; and the provisions of chapter 47, title 25, of this Code shall not be applicable to persons committed under this section. Any citizen of the country where such nuisance exists, or is kept or maintained, *may maintain an action in equity to abate and perpetually enjoin* the same, and any person violating the terms of an injunction granted in such proceeding, shall be punished as for contempt by a fine of not less than five hundred nor more than one thousand dollars, or by imprisonment in the county jail not more than six months, or by both such fine and imprisonment in the discretion of the Court."

The Court said: "If the objection to the statute is that it authorizes a proceeding in the nature of a suit in equity to suppress the manufacture and sale of intoxicating liquors, which are by law prohibited, and to abate the nuisance which the statute declares such acts to be, wherever carried on, we respond that, so far as at present advised, it appears to us that all the powers of a Court, whether at common law or in chancery, may be called into operation by a legislative body for the purpose of

suppressing this objectionable traffic; and we know of no hindrance in the Constitution of the United States to the form of proceedings, or to the Court in which this remedy shall be had. Certainly, it seems to us to be quite as wise to use the processes of the law and the powers of the Court to prevent the evil, as to punish the offense as a crime after it has been committed."

In case of *Commonwealth* v. *Schollenberger*, 156 Penn., 201, held: "A non-resident who comes into the State to embark in business is in the same situation as that of a resident, and the business done at his store is State and not interstate commerce." The Judge delivering the opinion said: "Interstate commerce does not necessarily depend upon the origin of the goods; or, rather, all men who buy and sell foreign merchandise are not necessarily engaged in interstate commerce. If it was otherwise, all merchants would be superior to State laws, for all deal to some extent in goods made in other States and countries. One who keeps a stock of goods in store for the inspection of customers, and sells from this stock to actual consumers, is a local dealer. His business is intra-State, not inter-State."

In *City of Indianapolis* v. *Beiler*, 138 Ind., 36, held: "Beer being a fermented intoxicating liquor or liquid, it follows that the depots or agencies of non-resident breweries, in which depots or agencies such beer is temporarily stored, until the same are disposed of, are subject to the operation and effect of the laws of the State, enacted in the exercise of its police power, to the same extent and in the same manner as though such liquor or liquids were produced in this State."

We concur in the views of the Supreme Court of Pennsylvania, expressed in the case of *Commonwealth* v. *Schollenberger*, *supra*, that, "One who keeps a stock of goods in store for the inspection of consumers, and sells from his stock to actual consumers, is a local dealer." The fact that he is a non-resident, or the agent of a non-resident, cannot affect the character of his business. Running a regular store where liquors are kept and sold in half-pints, pints, quarts, etc., to the consumer, constitutes a local business, with no element of interstate commerce in it. If the liquor so stored and sold was at one time the subject of interstate commerce, it lost that character when the dealer offered

it for sale over his counter. As was said by this Court in *Pittsburg Coal Company* v. *Bates*, referring to the coal there in question, it "had come to its place of rest for final disposal or use and was a commodity in the market." "It might continue in that condition for a year or two years, or only for a day." "It had become a part of the general mass of property in the State."

If attaching to the wharf in New Orleans a barge load of coal, imported in that form from another State, and there offering it for sale, made it "a part of general mass of property in the State," *a fortiori*—when liquors in pints and quarts, as imported, are stored and offered for sale in South Carolina, they at once become "a part of the general mass of property in the State," and are subject to State laws. Suppose a citizen of South Carolina should thus store liquors in the State. It would, immediately, be liable to seizure and confiscation whether it was produced in South Carolina or elsewhere. By what reasoning may we fairly conclude that a citizen of another State, or his agent, may store liquor here, and have exemption from the law that operates upon the citizen and product of South Carolina?

If the injunction placed upon the State by the Act of Congress is, that imported liquors shall, upon arrival in the State, be given equality of treatment with domestic liquors, how can this Court sustain a decision under which a non-resident imports liquors into South Carolina, and there stores and sells them regardless of all law of the State by which citizens are prohibited from doing so? By what strange magic may we transform the store where, from day to day, the agent of a non-resident liquor dealor sells intoxicating liquors by the half pint, into a great agency of interstate commerce, operated under the guardian care of the Federal Government? The police power of the State is a myth, if it may not be exercised to prevent the citizen and the stranger alike from storing their liquors within her limits, when, under the Act of Congress, she is told that upon their arrival, imported liquors shall be subject to her police laws to the same extent as though such liquors had been produced within her borders.

IV.

Sales of intoxicating liquor in quantities of one-half pint, one pint, and the like, are not sales in "original packages," within the meaning of the laws of commerce.

We submit the following propositions:

I. Any package containing five gallons or more, when imported by a manufacturer or rectifier and wholesale dealer, to be an original package, within the meaning of the law, must bear the stamps and brands required by the revenue laws of the United States.

II. Any package containing less than five gallons, put up by a manufacturer or rectifier and wholesale dealer, is an original package, within the meaning of the commerce laws, without stamps and brands, so long as it remains in exactly the condition in which it is imported, unless it is evidently adapted for and intended to meet the requirements of an unlawful retail trade.

III. When liquors are put up in bottles, and a number of bottles are packed or placed in a box, basket, crate or case, and thus shipped into the State, the entire box, basket, crate or case is the original package.

IV. If bottles are shipped in cars, packed in straw or otherwise, for obvious purpose of retail by the bottle, each bottle can not be considered an original package and sold as such.

These propositions are sustained by both State and Federal Courts. Section 3287 of R. S. of U. S. indicates what must be an original package taken from a warehouse: First. There must be on it a stamp on which shall be engraved the number of proof gallons, and that the tax has been paid. Second. There must be cut or burnt on each cask the name of the distiller, the district, the date of the tax, number of proof gallons, and the number of the stamp.

Section 3289 provides: "All distilled spirits found in any cask containing five gallons or more, without having thereon each mark or stamp required therefor by law, shall be forfeited to the United States."

As to liquors imported from a foreign country into this country, there is no such requirement. There is a distinction, then,

between an original package imported from a foreign country and one from one of the States of the Union.

As to rectifiers, section 3320 seems to define what shall be an original package. It requires that all packages of rectified spirits, containing five gallons or more, filled for shipment, sale or delivery, must be inspected by a gauger, who shall place thereon an engraved stamp signed by the Collector of the District and the said gauger, which shall state the date when affixed and the number of proof gallons, as follows: "Stamp for rectified spirits, No. —; issued by ——, Collector —— District; State of ———; Rectifier of Spirits in the —— District; State of ———, 18—; —— proof gallons," and signed by gauger.

Wholesale dealers and rectifiers are also required to keep a book showing from whom they bought whiskey, and all the particulars about the whiskey rectified by them, and that they have been inspected and marked and forwarded, as required by law.

A kindred question has recently been considered in the case of the *State* v. *Geotze*, S. E. R. for May 25, 1897, W. Va., p. 225, and the Court held: "When cigarettes are manufactured in a State and placed in paper boxes for commerce, transportation, and sale, and such boxes are provided with a paper label giving the name of the cigarettes, the caution notice, the number of the factory, the number of the revenue district, the name of the State in which they are manufactured, and the proper internal revenue stamp duly cancelled and pasted across the end of such package, so as to seal the same in accordance with the Act of Congress and the internal revenue laws governing the package, shipment, and sale of cigarettes, such paper box must be regarded as an original package, and its character will not be changed by its being placed with other boxes of the same kind in a wooden box for shipment."

In this case the Court said: "It is disclosed by the testimony and admissions of counsel that the defendant purchased the cigarettes in question from the American Tobacco Company, a New Jersey corporation, doing business in New York, and that said cigarettes were packed in boxes, each containing ten, which boxes were properly endorsed and stamped as required by law,

and that said paper boxes, for convenience of shipment, were packed in a wooden box, and shipped therein directly from the American Tobacco Company, in New York, to the defendant, in the city of Wheeling, and after the wooden box was opened, said cigarettes were sold in the paper boxes as they came from the factory, each containing ten, and not one cigarette at a time, as other cigars are sold by retail. In other words, they were sold by the box, and not by the cigarette. Were they sold by the original package, or should the defendant have sold the entire contents of the wooden box, without opening the same, in order to constitute the sale by the original package? We cannot say the wooden box constituted the original package, any more than we would say, if these paper boxes had been wrapped in thick paper and tied with twine, or packed in a barrel, for convenience in shipping, that the paper parcel or the barrel should be considered the original package. As the cigarettes came from the hands of the manufacturer, they were in paper boxes, each containing ten, for the convenience of their customers; and whether they sold one box or a thousand, these paper boxes must be regarded as original packages. These packages, as before stated, had upon them the label giving the name of the cigarettes, the caution notice, the number of the factory, the number of the revenue district, the name of the State in which they were manufactured, the name of the manufacturer, and the internal revenue stamp for ten cigarettes, duly canceled, pasted across the end of each package, so as to seal the same in accordance with the requirements of the Act of Congress and the internal revenue laws governing the packing, shipment, and sale of cigarettes, all of which is required by law to constitute a package of cigarettes ready for shipment and sale; and, when these things are done, the package may be regarded as an original package. None of this endorsement or stamping is required to be placed upon the pine box or barrel or paper parcels in which these packages might be shipped, and opening the box, barrel or parcel for the purpose of taking out the paper boxes, cannot be considered as breaking the original package. These packages are, moreover, required to be put up in this particular manner by the Act of Congress, and a penalty is prescribed for a failure so to do. Rev.

St., 3392, contains the following provisions, to wit: "That every manufacturer of cigarettes shall put up all the cigarettes that he either manufactures or has made for him, and sells or removes for consumption or use, in packages or parcels, containing ten, twenty, fifty, or one hundred cigarettes each, and shall securely affix to each of said packages or parcels a suitable stamp denoting the stamp thereon, and shall properly cancel the same prior to such sale or removal for consumption or use, under such regulations as the Commissioner of Internal Revenue shall prescribe." And section 3381 of said Revised Statutes, on the same subject, provides that "he shall neither sell or offer for sale any tobacco, snuff or cigars, except in original or full packages, as the law requires the same to be prepared and put up by the manufacturers for sale, or for removal for sale or consumption, and except such packages of tobacco, snuff and cigars as bear the manufacturer's label or caution notice, and his legal marks and brands and genuine internal revenue stamps which had never been used."

The same doctrine was announced by the Federal Court *In re Minor*, 69 Fed. Rep., 235, and *State* v. *McGregor*, 76 Fed. Rep., 957. All of these cigarette cases were decided upon the principle that the United States Statute determines what is an original package of cigarettes. This is evident from the letter of the Commissioner of Internal Revenue, copy of which is set forth in the opinion of the Court, in the case of *State* v. *McGregor*, 76 Fed. Rep., 958, which is in part as follows: "In reply to your inquiry of April 3d, submitting a sample package of cigarettes, bearing thereon the internal revenue stamp, the printed marks and caution label, and inquiring as to the necessity for a re-inclosing in an additional covering of paper, wood or other material in placing the same upon the market, you are notified that said package, being a statutory quantity, and properly stamped and cancelled, and bearing thereon the caution label and number of the factory, district and State, and the number of cigarettes contained therein, meets with the approval of this bureau, being a proper and original package, as contemplated by the existing law and regulations." Not so with intoxicating liquors, and in determining what is an original package of intoxicating liquors our conclusion must be based

not upon statute, but upon common usage and custom prevailing in commerce, as construed by the various Courts of the country.

In the case of *State* v. *Keith et al.*, 91 Ala., the question what constitutes an original package is considered. The Court said: "In Rion's case the liquor was shipped by Lowenthal & Co., wholesale and retail dealers, residing and doing business in Nashville, Tenn., in half-pint, pint, and quart bottles. The bottles were separately wrapped in tissue paper, each labelled 'original package,' with the name of the importer and shipper, in an open box, with hay laid between them, each box marked with the number of bottles, and three sizes contained therein. From the bill of lading put in evidence, it appeared that the box contained 1,075 bottles and twenty-five jugs of liquor, and that shipped at the same time were twenty casks containing bottles of beer, and three casks containing bottles of ale; this was done to facilitate the shipment. Rion sold the whiskey, as the agent of the importer, by the single bottle, wrapped and labelled in the manner stated. On these facts, the question arises, whether the bottles, having been placed in an open box, each bottle or the box containing them constituted an original package. The small size of the packages, if the bottles be otherwise considered original packages, should have no bearing upon the answer to this question. As said *In re Beine*, 42 Fed. Rep., 545: 'The importer may determine, in the absence of a regulation by Congress, the form and size of the packages he puts up for export. We do not controvert the proposition that, under the decision of the Supreme Court, intoxicating liquors may be shipped in single bottles as distinct and separate packages, and that the importer in such case has the right to sell a single bottle as in the original package.' Conceding this, was the liquor sold by Rion so shipped? *In re Beine*, *supra*, sheds no light upon this question. In that case single bottles of beer and whiskey, packed or sealed, or nailed up in boxes of pasteboard or wood, were shipped and sold in that shape. The boxes containing one bottle were not packed in any other box. In this case the bottles, separately wrapped in paper, were shipped in a box and sold singly. Merely labelling each bottle 'original package' did not make it

one, if it was not really an original package. The term to pack, in its ordinary signification, especially when used in reference to carriage, means to place together and prepare for transportation, as to make up a bundle or bale, or box or other receptacle; they do not form as many separate and distinct packages as there are articles, though they may be wrapped separately. The case or box or bale in which separate articles are placed together for transportation constitutes the original package in the commercial sense. It appears from the bill of lading that the transportation was not of bottles as distinct and separate packages, but of a specified number of bottles of liquor contained in boxes, each box indicating by mark thereon the number and sizes of the bottles contained therein. Had the boxes been covered or nailed or otherwise secured, it would not have admitted of serious question that they formed the original package. The purpose of securing a box with a fastened cover is the protection of its contents against loss by theft or otherwise, and for convenience in handling. A distinction between a box securely covered and one uncovered, in respect to its character and status as an original package, is a distinction without a difference, unsupported by principle or reason. The mode of shipment adopted was manifestly a mere contrivance to evade the consequence of the violation of the State prohibition law, under the pretext of interstate commerce, which does not entitle appellant to the protection afforded by the Federal Constitution to importers and sellers of original packages. The evidence in Rion's case fails to show an importation and sale coming within the principle decided in *Leisey* v. *Harden*, *supra*."

In *Commonwealth* v. *Bishman*, 21 Atlantic Reporter, 12, the Court said: "Carson was the agent of P. Welty & Co., Wheeling, W. Va.; that as such he leased the room of defendant, and therein, assisted by defendant, sold liquor in pint and quart bottles, which was consigned to him by P. Welty & Co. as their agent. Each bottle was enclosed in a pasteboard box, sealed with a strip of paper, pasted across the lid and stamped with the name of the firm. These packages were shipped in boxes and barrels to Carson, who, with defendant's assistance, unpacked them when they arrived, and placed the pasteboard packages on his shelves. * * *

The defendant was engaged in selling liquor at retail, and his claim that he was selling only by original packages was little better than a burlesque."

In case of *State* v. *Chapman* (S. D.), 47 N. W. R., 411, the Court said: "In case of *Leisey* v. *Harden*, the plaintiffs were citizens of Illinois, and doing business as brewers in Peoria, of that State. They shipped 122 quarter barrels of beer, 171 one-eighth barrels of beer, to John Leisey, Keokuk. He received the same and sold it in the original keg or sealed case, as manufactured and put up by said Leisey & Co., and imported by them into the State of Iowa. No kegs or cases sold or offered for sale were broken or opened or changed in any particular until sold, and as soon as purchased were removed from the premises. Such being the facts, they come already within the general rule laid down in that case. * * *

"Not so in the case at bar. The testimony shows that liquor and beer were sold by changing the form and condition of the package from that in which it was shipped and received. Bottles were packed in boxes. These bottles were taken from the boxes and displayed and sold separately, without any reference to the packages in which they were shipped. The importer having determined the size and form of the packages he puts up for export, determines the size and form in which they must be sold." See *In re Beine*, 42 Fed. Rep., 546; *In re Harmon*, 43 Fed. Rep., 372.

In the case of *In re Beine*, 42 Fed. Rep., 545, the Court said: "A question was raised in the argument as to whether the smallness of some of the packages sold did not deprive them of the protection given to vendors of original packages. Single bottles of beer and whiskey, packed and sealed or nailed up in boxes made of pasteboard or wood, were shipped and sold in that shape. The boxes containing one bottle were not packed in any other box, but shipped singly and separately as so many distinct and separate packages. It is not perceived why, in the absence of a regulation by Congress, the importer may not determine for himself the form and size of the packages he puts up for export. The idea that small packages of liquor can not be treated as original packages, because they are small, springs from the con-

struction back of it, that liquor in any form, or in any sized package, is not a legitimate subject of commerce. As long as packages of liquor in any form or size may lawfully be sold by importers or their agents in a prohibition State, the size of the package is not of much importance."

In the case of *In re Harmon*, 43 Fed. Rep., 372, the Court said: "The question has been strongly presented by counsel on both sides, and it is urged on the part of the relator that the fact that paper wrappers sealed up around each bottle made a separate package, and as the express company furnished the pine boxes to be returned, they had no other effect. I am satisfied that these were mere subterfuges resorted to by Jordan and the relator to avoid the penalty of the State law, and that it made no difference whether there were paper boxes around each bottle or not; if each was a separate package, within the provisions of the Constitution of the United States, as construed by the Supreme Court of the United States, with the box of wrappers, it was equally so without it. Nor does it make any difference to whom the boxes belonged. These boxes were closely packed together in the boxes by Jordan, the shipper, and in that form shipped to Sardy, and in that way they were kept by relator until sold and taken out one bottle at a time. It was, in other words, a retail saloon. I am satisfied that the whiskey in the box, although in separate bottles, for the convenience of the trade in the retail saloons, was but one package, within the meaning of the interstate commerce clause of the Constitution, as construed by the Supreme Court, and might have been sold together in one sale without breaking the package, and, if this had been done, the vendor would have been protected in making the sale; but this was not done, and he is not entitled to the protection and release as asked in this Court."

A full discussion of what constitutes an original package will be found in the case of *The State* v. *Winters et al.* (Kan.), 25th Pac. Rep., p. 235; the doctrine announced there is in accordance with the position we take.

In the case of *Commonwealth* v. *Schollenberger*, 156 Penn. St., p. 201, it was held (Syll.): "A non-resident who comes into this State to embark in business is in the same situation as that of a

resident, and the business done at his store is State and not interstate commerce.

"An 'original package' is such form and size of package as is used by producers or shippers for the purpose of securing both convenience in handling and security in transportation of merchandise between dealers in the ordinary course of actual commerce.

"Where a mode of putting up a package is not adapted to meet the requirements of actual interstate commerce, but the requirements of an unlawful intra-state retail trade, the dealer will not be protected on the ground that he is selling an original package."

In the case of *Commonwealth* v. *Paul*, 170 Penn. St., p. 284 (Syll.): "A package devised by a non-resident manufacturer, or put up by him, adapted for sale at retail to individual consumers, such, for example, as a flask of whiskey, or a tub or pail or roll of oleomargarine, and actually sold by him or his agent to the consumer for use as an article of food or drink, in violation of the laws of the State where such sales take place, is not an 'original package' within the meaning of the law relating to interstate commerce; and the punishment of such sales under the police power of the State is not an interference with the powers of Congress, or with the commerce between the States, which is protected by the Constitution of the United States."

We can not express our view of the legality and right of the sale of liquors by non-resident dealers and their agents in quantities of one-half pint, etc., in more apt language than was used by Mr. Justice Williams of the Supreme Court of Pennsylvania, in *Commonwealth* v. *Schollenberger* (*supra*), as follows:

"This case belongs to a rapidly growing class that has already become uncomfortably large and troublesome in this State. The profits to be derived from an unlawful traffic are much larger than those that flow from legitimate trade, provided the unlawful traffic may be pursued without serious interference from the officers of the law. Law-abiding citizens will not embark in a business that is forbidden by the laws of the State in which they live. Timid men are afraid to do so. This kind of operation is left, therefore, to those who have no respect for law, no interest

in the public welfare, and no fear of public opinion. When such men deliberately determine to put money in their pockets by engaging in a business which the State has declared to be injurious to the public morals, the public health, or the public peace, and has, therefore, forbidden altogether or placed under strict police regulations, they are morally certain to seek immunity for themselves and their unlawful business by immediate flight to the sanctuary of the National Constitution, and there laying hold on the horns of the altar of interstate commerce. The road to this refuge of lawbreakers is well beaten. There are signboards at every crossing on the route; and the intermediate stations for possible rest wear conspicuous signs of invitation. The travelers over it are generally foreigners to the State whose laws they trample upon, and include a motley assortment of traders. Beginning with the peripatetic swindlers whose worthless wares are transported in tin trunks which they carry in their hands, and who hunt their victims in the secluded villages and along the country roads with an instinct that rarely fails; and running up or down the scale of lawbreakers, to t men whose commercial operations extend to the sale of oleomargarine by the pound, and of intoxicating drinks by the pint, there is no man in the procession who is not a conscious and deliberate lawbreaker, and who does not set his possible profits from a forbidden business above his duty to society or the State that protects him. These men seek to pervert a rule of law that has a wide and beneficial field of operation. They claim to be engaged in interstate commerce, and to be entitled to the protection of the General Government as against the police laws of the individual States, for that reason. In support of their claim, they will assert that their 'goods,' whether consisting of oleomargarine, beer, whiskey, paste diamonds, pinchbeck watches or the like, were made on the other side of the State line and imported by or for them; or it may be they will claim to be the agents or factors of the makers; or to have received and be engaged in selling 'original packages,' consisting of a pound of oleomargarine, or a pocket flask of whiskey, put up expressly for their trade at the still or factory 'just over the line.' The mischief done and attempted in this manner, under the guise of

interstate commerce, is so great, so open and so difficult to suppress or punish, that in many States, besides this, it has become a matter of general and sincere regret that the interstate commerce clause was ever held applicable to trade in any article recognized throughout the civilized world as a proper subject for police regulation and control. We are embarrassed by the difficulties in the way of the enforcement of our police legislation, made in good faith, for the protection of our citizens. The question involved in this case is, therefore, one of great practical importance. It is nothing less than whether the police power of the States survives at all, or has been absorbed and extinguished by the interstate commerce clause in the National Constitution."

V.

The provision of the Dispensary law requiring all intoxicating liquors used in this State to undergo inspection to determine their purity, is valid as to all liquors, whether domestic or imported, and by whomsoever purchased or used.

As an inspection law, this Act is subject to the following principles:

I. That the States, in the exercise of the police power, may pass inspection laws which are not, in their express words or operation, a burden upon interstate commerce, by discriminating against the products or citizens of other States, and which operate equally upon the products and citizens of the States themselves and citizens and products of other States.

Gibbons v. *Ogden*, 9 Wheaton, 203.
Brown v. *Maryland*, 12 Wheaton, 419.
Robbins v. *Shelby Tax District*, 120 U. S., 403.
Smith v. *Alabama*, 124 U. S., 465.
Dent v. *West Virginia*, 129 U. S., 114.
Crutcher v. *Kentucky*, 141 U. S., 59.
Voight v. *Wright*, 141 U. S., 65.
Plumley v. *Mass.*, 155 U. S., 472.

II. That the Legislature is the judge of what is against the public health, morals, and safety of the State; and when, in the exercise of the police power, it enacts a law declaring the use of any article to be against them, it will not conflict with the Ninth

Article of the Constitution of the United States, unless it discriminates against the citizens and products of other States.

Railroad v. *Husen*, 95 U. S., 465.

Crowley v. *Christiensen*, 137 U. S., 91.

Plumley v. *Mass.*, 155 U. S., 472.

III. That the State, in the exercise of the police power, can enact laws protecting the people from the consequences of ignorance, incapacity, fraud, disease, poverty, and crime.

Sherlock v. *Alling*, 93 U. S., 103.

Dent v. *West Va.*, 129 U. S., 114.

Minn. v. *Barber*, 136 U. S., 313.

Brimmer v. *Rebman*, 138 U. S., 78.

Plumley v. *Mass.*, 155 U. S., 472.

We submit that the system of inspection provided is in accord with all these principles.

The main features of the Act are as follows:

I. The Act applies to all citizens of this State and of other States alike. There is no discrimination against the products of other States in favor of the products of South Carolina. On the contrary, if there is any discrimination, it is against the products of this State in favor of the products of other States—in that citizens of this State can purchase the liquor products of South Carolina only through the County Dispensaries, whereas such citizens may purchase the liquor products of other States and foreign countries, either through the Dispensary or by direct importation under the system of inspection provided. Thus the liquor products of other States are given two channels of trade through which to reach the consumer in South Carolina, whereas the products of this State are limited to one.

II. The same test, to wit: freedom from poisonous, hurtful and deleterious matters, is applicable to liquors sold through officers, and all citizens are subjected to identically the same inspection law.

III. A competent chemist, paid by the State, is required to immediately test all samples of liquors submitted to him by persons desiring to import such liquors for their personal use. Heavy penalties are provided for any neglect of duty on the part

of the chemist, thus assuring the importer promptness and efficiency in the test required.

IV. No fee or tax is charged or imposed upon the citizen for testing the sample or for the transportation charges thereon. Thus furnishing the importer a safeguard against injurious articles without expense.

V. It is not necessary that the liquor be met at the border of the State by the chemist, or for it to be sent to him, but the Act requires only a sample thereof to be sent and the chemist's certificate to be forwarded to the party from whom the same is to be purchased.

VI. This inspection law is complete, simple and easily understood; and causes the citizen no inconvenience, save possibly a little delay, which is reduced to the minimum by the provisions of the Act.

Under the Act, manufacturers and dealers in other States are permitted to solicit orders for liquors in South Carolina. The Act based upon these principles makes *quality* alone the test for admission to the market in this State as a legitimate article of commerce. This is in accord with the decisions of the Court.

In the case of *Bowman* v. *Railroad Company*, 125 U. S., 488, the Court said: "The right of the States to pass inspection laws is expressly recognized in art. I., section 10, of the Constitution, in the clause declaring that no State shall, without the consent of Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws."

The nature and character of the inspection laws contemplated by the Federal Constitution are fully exhibited in case of *Turner* v. *Maryland*, 107 U. S., 38. The Court held: "The object of inspection laws, said Chief Justice Marshall, in *Gibbons* v. *Ogden*, is to improve the quality of articles produced by the labor of a country, to fit them for exportation; or it may be for domestic use. They are confined to such particulars, as in the estimation of the Legislature and according to the conditions of trade, are deemed necessary to fit the imported articles for the market, by giving to the purchaser the public assurance that the article is in that condition, and of that quality, which makes it

merchantable and fit for use or consumption. They are not founded on the idea that the things in respect to which importation is required, are dangerous or obnoxious in themselves."

The Justice delivering the opinion in that case further says: "Recognized elements of inspection laws have always been quality of the article, form, capacity, dimensions, and weight of package, mode of putting up and marking and branding of various kinds, all these matters being supervised by a public officer having authority to pass or not to pass the articles as lawful merchandise, as it did or did not answer the prescribed requirements. It has never been regarded as necessary, and it is manifestly not necessary, that all of these elements should coexist to make a valid inspection law. *Quality alone* may be the subject of inspection, without other requirements, or the inspection may be made to extend to all of the above matters."

In the case of *Donald* v. *Scott*, the case of *Minnesota* v. *Barber* is cited as somewhat similar to the inspection feature of the Dispensary Law of 1895. In this case the law related to an article of food, and not to liquors. But there is one essential difference between the inspection law of South Carolina and that of Minnesota, which was condemned by the Court. In that case, all cattle to be slaughtered were required to be imported in the State, and slaughtered in the State, and no meat from any other State could be sold, unless it had been slaughtered in the State. The Court held the Act unconstitutional, on the ground that its effect was to burden commerce with other States, because it prohibited the importation of all cattle into the State for sale, whether free from disease or not. In *Plumley* v. *Massachusetts*, U. S., 469, the Court, in speaking of cases of *Railroad Company* v. *Husen*, 95 U. S.; *Minnesota* v. *Barber*, 136 U. S.; *Brimmer* v. *Rebman*, 138 U. S.; and *Walling* v. *Michigan*, 116 U. S., said: "Each of these cases involved the question whether one State could burden interstate commerce by means of discriminations, enforced for the benefits of its own products and industries at the expense of the products and industries of other States." In commenting on *Minnesota* v. *Barber*, the Court said: "The Act of Minnesota directly tends to restrict the slaughtering of ani-

mals whose meat was to be sold in that State to those engaged in such business in that State."

In speaking of *Walling* v. *Michigan*, the Court said, that the invalidity of the Act of Michigan was on account of requiring persons living outside of the State, but engaged in the State in selling liquors to be shipped there from other places, to pay a tax, while no similar tax was imposed upon persons selling or soliciting the sale of liquors manufactured in that State.

The inspection system provided in the Act of 1897 differs materially in principle, purpose, and effect from the statutes considered in those cases. It does not exclude any article from the market because of its ultra State origin, but, on the contrary, throws open the markets of this State to foreign products to an extent not allowed even to domestic products. It puts all liquors under a test as to *quality* alone, without refereuce to their place of origin.

It can not be contended that the inspection system is invalid on any grounds of inconvenience.

In the case of *New York, New Haven and Hartford Railroad Co.* v. *New York*, 165 U. S., 628, it was held: "Cars employed in interstate commerce are not exempt, in the absence of national legislation covering the subject, from the operation of a State law forbidding, under penalties, the heating of passenger coaches in that State by stoves or furnaces inside the cars or suspended therefrom." In this case, the question was raised that the Act was in conflict with the interstate commerce clause of the United States Constitution, and, therefore, void; but the Court sustained its constitutionality. It was insisted in the argument that it was impossible to carry out this law because of the necessity of changing the cars heated as required by the Act on arrival at the borders of New York. The Court said: "These possible inconveniences can not affect the question of power in each State to make such reasonable regulations for the safety of passengers on interstate trains as, in its judgment, all things considered, is appropriate and effective. Inconveniences of this character can not be avoided so long as each State has plenary authority within its territorial limits to provide for the safety of the public according to its views of necessity and public policy, and so long

as Congress deems it wise not to establish regulations on the subject that would displace any inconsistent regulations of the State covering the same ground."

We would further submit, that the inspection system provided in the Act of 1897 meets every objection to the former Act presented by the Circuit Court in the case of *Ex parte Schneider et al., in re Donald v. Scott*, 74th Fed. Rep., 859; and in passing the inspection law, the General Assembly endeavored not only to conform strictly to the decisions of the Supreme Court of the United States, but to every utterance of the Circuit Court as well.

In the case just referred to, his Honor, the Circuit Judge, discussing the inspection system of the former Act, said: "The Attorney General says that this is an inspection law. Upon examining the Act, no provision is found for an inspection of spirituous liquors by the chemist of the South Carolina College, except when instructed to do so by the State Board of Control, and then only of such liquors as they shall purchase for use in the State; none making it his duty to inspect for any one else; none fixing his fees. He is not a State officer, but a professor in the College, having duties connected with his office which may or may not engross his time. The Act declares alcoholic liquors which do not bear a certificate of test by the chemist of the South Carolina College poisonous and injurious to the welfare, good health, and safety of the State, solely because of the absence of the certificate. No other reason whatever is given. At the same time, it omits to make it the duty of this chemist to inspect and test alcoholic liquors except when they are purchased for or by the State Board of Control. He may refuse to make any test of any other liquors. He can lawfully do so, and he can not be compelled to act otherwise. He may consent to make the test, but he can impose terms which would be prohibitory. The natural and reasonable effect of the Act is to exclude from the State entirely all other liquors whatever. Its direct result is to put in the hands of the State Board of Control the right to dictate who may or who may not import into the State these goods, and to shut out every one who does not meet their approval. The necessary consequence of its enactment is to burden and in a great measure impair commerce in this arti-

cle between citizens of this State and other States. Indeed, if by implication it be held that the State chemist could test other liquors than those bought by the State Board of Control, the fact that such liquors must be brought to him within the State, and must be transported through the State, before the test can be made, liable at once to seizure and confiscation, because not yet tested, effectually prevents any such test and inspection by him."

The mere reading of the Act of 1897 is sufficient to show that it meets every objection expressed or intimated by the Circuit Court in this case.

We do not contend for a moment that this inspection law does not affect commerce to any extent. It is difficult to conceive of any law enacted in the exercise of the police power that does not to some extent, at least, affect interstate commerce, and in every instance the question is, does it affect commerce to the extent of its regulation? This Act is not directed against commerce, but relates to the rights, duties, and liabilities of citizens, and only incidentally and remotely affects the operations of commerce. Such laws have uniformly been held valid. This principle has been very recently fully considered by this Court in the case of *Hennington* v. *Georgia*, 163 U. S., 299, in which a statute of Georgia, prohibiting all freight trains, both domestic and interstate, from running on Sunday, was declared constitutional.

Mr. Justice Harlan, delivering the opinion of the Court, said, after reviewing many authorities: "These authorities make it clear that the legislative enactments of the States passed under their admitted police powers, and having a real relation to the domestic peace, order, and health and safety of their people, but which, by their necessary operation, affect, to some extent, or for a limited time, the conduct of commerce among the States, are yet not invalid by force alone of the grant of power to Congress to regulate such commerce; and if not obnoxious to some other provisions of the Constitution, are to be respected in the Courts of the Union, until they are superseded and displaced by some Act of Congress in execution of the power granted to it by the Constitution."

Upon these principles we seek to uphold the inspection feature of the Act of 1897 as valid and constitutional.

By reference to the Act of 1897, hereto appended, it will be observed that Section 41 of the former Act has been repealed. This Section purported to prohibit the soliciting of orders for liquor within the State. The Circuit Court, in *Ex parte Loeb*, held it invalid, and the General Assembly repealed it, at the same time that it provided for a system of inspection of liquors imported for personal use.

Under the decision of this Court, in *Scott* v. *Donald*, giving citizens of the State the right to make such importations, the General Assembly, in enacting the system of inspection provided, endeavored to subject liquors imported for personal use to exactly the same test that is applied to liquors purchased and sold through the Dispensary.

Referring to this system of inspection, his Honor, the Circuit Judge, in his opinion in this case, says: "A resident of the State may, under the present Dispensary Law, send his orders to a producer outside of the State for liquors for his own personal use and consumption, and a limited importation, within a restricted period and under an absolute condition, is allowed such resident. The producer is limited to this. He can not import his goods into this State in any other way. The condition of such importation is this: Any resident who desires to import for his own personal use and consumption shall first certify to the chemist of the South Carolina College the quantity and kind of liquor he wishes to import, with the name and address of the person from whom he wishes to purchase, stating, also, that such proposed purchaser will forward to Columbia, S. C., to said chemist, a sample of the liquor. On receipt of the sample, the chemist immediately proceeds to test it, and, if found to be pure and free from any poisonous, hurtful or deleterious matter, he issues a certificate to that effect, giving names of proposed consignor and consignee, and the quantity and kind of liquor to be imported, sends it free of expense and postpaid to the consignor, and the liquor can be shipped within sixty days after the date of the certificate, which can be used only once."

Then, seemingly following further the view that nothing short

of prohibition is valid, his Honor says: "It will be noted that the use of alcoholic liquors as a beverage is not prohibited, nor is their importation for personal use forbidden, provided such beverages are free from 'poisonous, hurtful, and deleterious matter,' other than the alcohol in them. The Act provides the essential and conclusive test on this point—the certificate of the chemist of the South Carolina College. The Act also declares all alcoholic liquors not tested by the chemist of the South Carolina College and so found to be 'free from all poisonous, hurtful, and deleterious matters,' necessarily matters other than alcoholic ingredients, to be of a detrimental character, and their use and consumption to be against the morals, good health, and safety of the State—that is to say, without any regard whatever to their real character, the presence or absence of the certificate is the sole test. This can be sustained only on the fact that it is a valid inspection law."

What could determine the legality or illegality of the liquor, if not the "presence or absence of the certificate?" That, however, is not the sole test, as stated by the Circuit Court. It is no test at all, but is the evidence of the test. The test is freedom from poisonous, hurtful, and deleterious matters, and the certificate is the guide by which officers are to determine the legality of the liquor. By its presence or absence the officer may know whether or not the liquors reach the standard required by the law of the State.

His Honor further says: "In *Scott* v. *Donald*, the Supreme Court, discussing a similar feature in the Act of 1895, says: 'To empower the State Chemist to pass upon what the law calls the alcoholic purity of such importations by chemical analysis, can scarcely come within any definition of a reasonable inspection law.' To the proposition announced by this Court, we accede, but the provision of the Act now under consideration is not similar to the Act of 1895. In the former Act, the standard was alcoholic purity; whereas, in the present Act, as stated by the Circuit Court, the requirement is that liquors used in South Carolina shall be 'free from poisonous, hurtful, and deleterious matter, other than the alcohol in them.'"

Further considering this method of inspection, his Honor says:

"There can be no doubt that a State can enact laws protecting its citizens in the purchase of articles, imported or domestic, from purchasing something they did not intend to buy, or adulterated, so as to threaten disease or death. *Plumley* v. *Massachusetts*, 155 U. S., 461, 15 Sup. Ct., 154. But it must be a law which protects, or at least tends to protect, the citizen. It must give him security. If it does not do so absolutely, still it must contribute to secure him. The mode of inspection in this Act is by sample. Let it be supposed that the sample has been furnished, has been inspected, has been approved, and that the certificate has been sent to the consignor; what sort of assurance does it give the citizen that this liquor he thereupon receives accords with, come up to, or in any wise resembles the sample? What protection does it give the citizen from fraud from a failure to send liquor according to sample? None whatever. It only subjects him to the seizure and forfeiture of his goods, if, perchance, they should be inspected. The fraudulent seller is out of reach. Upon what, then, must the citizen rely? He can only rely upon the business character, standing and integrity of the person from whom he buys, without any regard whatever to the inspection. This so-called inspection, furnishing no security to the citizen, cannot thereby be justified. It can operate only as a restriction upon, and hindrance and burden to, his acknowledged right to import for his personal use. It is thus an interference with interstate commerce, and in itself void."

In this connection, his Honor seems to have considered only the portion of the Dispensary Act relating to importation for personal use, without any relation to the remainder of the Act. We must construe the law as a whole, and when it is suggested that a method of inspection by sample affords no guarantee to the importer, that the "liquor he thereupon receives accords with, comes up to, or in any wise resembles the sample," we must also remember that the same Act provides a method by which he can purchase his liquor through the Dispensary after it has undergone the required test. The law offers to the citizen pure liquors at the County Dispensary, but says to him at the same time that he may purchase beyond the State, if he prefers,

and requires only that the liquors so purchased shall be subject to the same test as those offered him at home.

His Honor says that the citizen can "only rely upon the business character, standing and integrity of the person from whom he buys, without any regard whatever to the inspection." Again, we say, that the citizen may buy from the State, but if he chooses to buy from a non-resident dealer, it is presumed that he relies to some extent upon his character and integrity.

The principle upon which the inspection feature is based is the same principle of equality of treatment of foreign and domestic products that characterizes the entire Act; the only discrimination, if there is any, being that the foreign product has two channels through which to reach the importer in South Carolina, to wit: through the Dispensary or by direct importation for personal use; whereas, the domestic product is limited to one. If this inspection system bears equally upon residents and non-residents, and does not discriminate against the products of other States, the requirements of the Federal Constitution and the Acts of Congress are complied with. When this has been done, what method the State of South Carolina may adopt for controlling the liquor traffic is a matter whose consideration is wholly without the jurisdiction of the Federal Court.

His Honor, the Circuit Judge, does not maintain that the inspection system discriminates against the citizens or products of other States. He again relies upon the proposition that it is an "interference with interstate commerce, and in itself void." Again, we reply, that however much it may affect commerce, it bears alike upon the citizen and the stranger, upon the domestic and foreign product, and therein fulfills the requirement of "uniformity of treatment" contemplated by the Wilson Act, which, alone, is the test of the validity of the Statute.

Until it is shown that the inspection feature of the Dispensary Law is discriminating either directly or by natural operation, we respectfully submit that this Court must sustain it.

Finally, we beg to say, whatever may be the constitutional right of a citizen, as decided in *Scott* v. *Donald*, to import liquors for his own personal use, the Courts have uniformly held that there is no inherent right in a citizen to sell intoxicating liquors; that it is not a privilege of a citizen of a State or of a citizen of the United States. It was so held in *Crowley* v. *Christiansen*, 137 U. S., 91, following *Mugler* v. *Kansas*, 123 U. S., 659. But why quote other decisions, when the Court from which we are now appealing has furnished us authority? In the case of *Cantini* v. *Tillman*, 54 Fed. Rep., 659, his Honor said: "We have seen that the right to sell intoxicating liquors is not one of the privileges of American citizenship; that it is not within the protection of the fourteenth amendment; that it is within the police power." A State statute that denies such a right to a citizen of South Carolina by operation of the Wilson Act extends as well to the stranger, when he comes within her borders. This principle was recognized by his Honor, Judge Simonton, in *Ex parte Schneider et al., in re Donald* v. *Scott*, 74 Fed. Rep., 864, when he said: "No citizen of any other State can claim greater privileges than her own citizens." We respectfully submit that to sustain the injunction in this case, is to subvert this principle of equal privileges, to ignore the Act of Congress of August, 1890, and to destroy the "uniformity of treatment" contemplated by that Act.

WILLIAM A. BARBER,
ATTORNEY GENERAL OF SOUTH CAROLINA,
For Appellants.

NOTE: This Brief is intended to apply also to Case No. 515.

APPENDIX.

ACT OF 1896---NO. 61.

AN ACT to Provide for the Election of the State Board of Control and to Further Regulate the Sale, Use, Consumption, Transportation and Disposition of Intoxicating and Alcoholic Liquors or Liquids in the State and Prescribe Further Penalties for Violation of the Dispensary Laws and to Police the Same.

Section 1. Be it enacted by the General Assembly of the State of South Carolina, That the manufacture, sale, barter or exchange, receipt or acceptance, for unlawful use, delivery, storing, and keeping in possession, within this State, of any spirituous, malt, vinous, fermented, brewed (whether lager or rice beer), or other liquor, any compound or mixture thereof, by whatever name called or known, which contains alcohol and is used as a beverage, by any person, firm or corporation; the transportation, removal, the taking from the depot or other place by consignee or other person, or the payment of freight or express or other charges by any person, firm, association or corporation upon any spirituous, malt, vinous, fermented, brewed (whether lager, rice or other beer,) or other liquor, or any compound or mixture thereof, by whatever name called or known, which contains alcohol and is used as a beverage, except as is hereinafter provided, is hereby prohibited under a penalty of not less than three (3) nor more than twelve (12) months at hard labor in the State Penitentiary or pay a fine of not less than one hundred dollars nor more than five hundred dollars, or both fine and imprisonment, in the discretion of the Court, for each offense. All such liquors, except when bought of a State officer authorized to sell the same, or in possession of one and having been duly tested by the Chemist of the South Carolina College and found to be chemically pure, are declared to be contraband and against the morals, good health and safety of the State, and all alcoholic liquors in this State and not having been tested by the Chemist of the South Carolina College and found to be chemically pure are hereby declared to be of a poisonous and detrimental character, and their use and consumption as a beverage are against the morals, good health and safety of the State, and all such liquors may be seized wherever found, without a warrant, and turned over to the State Commissioner.

Section 2. A Board consisting of five members, to be known as the State Board of Control, shall be elected by the General Assembly at this session to carry out the provisions of this Act. The terms of office of the Board so elected shall be for one, two, three, four and five years respectively, and those elected shall determine by lot which shall take the respective terms. At the expiration of the term of office of each member his successor shall be elected for a term of five years. They shall receive for their services the same per diem and mileage as members of the General Assembly. The State Board of Control shall devise and inaugurate such a system of bookkeeping and accounting as they may deem advisable, and shall elect a clerk or bookkeeper, who shall hold his office during the pleasure of the Board and shall receive as compensation for his services a salary of fifteen hundred dollars per annum. The State Board of Control, under such rules and regulations as may be adopted by said Board, shall purchase all liquors for lawful use in this State, and shall have the same tested and declared to be pure as hereinbefore and hereinafter provided.

Section 3. That the State Board of Control shall, at the expiration of the term of the present Commissioner, and at the expiration of every two years thereafter, appoint a Commissioner, which appointment shall be submitted to the Senate at its next session for its approval; said Commissioner shall be believed by the State Board of Control to be an abstainer from intoxicants, and shall, under such rules and regulations as may be made by the State Board of Control, furnish all intoxicating liquors for lawful use in this State, to such persons as may be designated as Dispensers thereof, to be sold as hereafter prescribed in this Act. Said Commissioner shall reside, and have his place of business, in the city of Columbia, in this State, and hold his office two years from his appointment and until another be appointed in his stead. He shall be subject to removal for cause by the State Board of Control. He shall qualify and be commissioned the same as other State officers, and shall receive an annual salary of twenty-five hundred dollars, payable from the Dispensary fund upon the warrant of the State Board of Control. He shall be allowed a bookkeeper, who shall be paid in the same manner a salary of twelve hundred dollars, and such other assistants as in the opinion of the Board of Control may be deemed necessary. He shall not furnish to the County Dispensers any intoxicating or fermented liquors except such as have been tested by the Chemist of the South Carolina College and declared to be pure: Provided, That said Board of Control shall have authority to appoint such assistants as they may find necessary to assist the Chemist of the South Carolina

College in making the analyses required by this Act; and the said Board of Control may fix such reasonable compensation, if any, as they may deem proper for the services rendered by such Chemist or such assistants. Each County Dispenser shall remit to the State Treasurer all moneys accruing to the State from the sale of liquors under such rules as may be prescribed by the State Board of Control, and the State Treasurer shall keep a separate account with said fund, from which the State Board of Control shall draw from time to time upon warrants, or in such manner as they may provide, the amount necessary to pay the expenses incurred in conducting the business. All rules and regulations governing the said Commissioner or County Dispensers in the performance of any of the duties of his office, where the same are not provided for by law, shall be prescribed by the State Board of Control. The State Commissioner shall before entering upon the duties of his office execute a bond to the State Treasurer, with sufficient sureties, to be approved in the same manner as the bonds of other State officers, in the penal sum of ten thousand dollars, for the faithful performance of the duties of his office. In all purchases or sales of intoxicating liquors made as contemplated in this Act, the State Board of Control shall cause a certificate to be attached to each and every package containing said liquors when the same is shipped to State Commissioner from the place of purchase, or by State Commissioner to the County Dispensaries, certified by their official signatures and seal, which certificate shall state that liquors contained in said packages have been purchased by the State Board of Control for use within the State of South Carolina, under the laws of said State, and shall also cause to be attached to all such liquors the certificate of the Chemist of the South Carolina College that samples of the same have been tested as required by this Act; and without such certificates any package containing liquors which shall be shipped from place to place within the State, or delivered to the consignee by any railroad, express company or other common carriers, or be found in the possession of any common carrier, shall be regarded as contraband and may be seized without warrant for confiscation, and such common carrier shall be liable to a penalty of five hundred dollars for each offense, to be recovered against said common carrier in any Court of competent jurisdiction by summons and complaint, proceedings to be instituted by the Solicitor of any Circuit with whom evidence may be lodged by any officer or citizen having knowledge or information of the violation; and any person attaching or using such certificates without the authority of the State Board of Control, or any counterfeit certificate, for the purpose of securing the

transportation of any intoxicating liquors within this State, in violation of law, shall, upon conviction thereof, be punished by a fine of not less than five hundred dollars and imprisonment in the Penitentiary for not less than one year for each offense.

Section 4. The State Commissioner shall before shipping any liquors to Dispensers, except lager beer, cause the same to be put into packages of not less than one-half pint nor more than five gallons, and securely seal the same, and it shall be unlawful for the Dispenser to break any of such packages or open the same for any reason whatsoever. He shall sell by the package only, and no person shall open the same on the premises: Provided, This Section shall not apply to malt liquors shipped in cases or kegs or bottles thereof shipped in barrels; and such malt liquors may be sold by the County Dispenser in such quantities, of not less than one pint, as he may see proper: Provided, The same shall not be drunk on the premises. Dispensers shall open their places of business and sell only in the day time, under such rules as may be made by the State Board of Control, or by the County Board of Control with approval of the State Board of Control.

Section 5. It shall be the duty of the State Board of Control to appoint a County Board of Control composed of three persons believed by the said Board not to be addicted to the use of intoxicating liquors. The persons so appointed shall hold their office for a term of two years, and until their successors are appointed, and shall be subject to removal for cause by the State Board of Control. Said County Board of Control shall make such rules as will be conducive to the best management of the sale of intoxicating liquors in their respective Counties: Provided, All such rules shall be submitted to the State Board and approved by them before adoption. The members of the County Board of Control shall qualify and be commissioned as are other County officers without fees therefor.

Section 6. Applications for positions of County Dispenser shall be by petition, signed and sworn to by the applicant, and filed with the County Board of Control at least twenty days before the meeting at which the application is to be considered, which petition shall state the applicant's name, place of residence, in what business engaged, and in what business he has been engaged two years previous to filing petition; that he is a qualified elector of this State and a resident of the County; that he has never been adjudged guilty of violating the law relating to intoxicating liquors, and is not a keeper of a restaurant or place of public amusement, and that he is not addicted to the use of intoxicating liquors as a beverage. The appointment shall be made only on condition that the applicant shall execute

to the County Treasurer a bond in the penal sum of three thousand dollars, with good and sufficient sureties, conditioned that he will well and truly obey the laws of the State of South Carolina, now or hereafter in force, in relation to the sale of intoxicating liquors; that he will pay all fines, penalties, damages and costs that may be assessed or recorded against him for violations of such laws during the term for which said appointment is made, and will not sell intoxicating liquors at a price other than that fixed by State Board of Control. Said bond shall be for the use of the State and County or any person or persons who may be damaged or injured by reason of any violation on the part of the obligor of the law relating to intoxicating liquors purchased or sold during the term for which said appointment is made. The said bond shall be deposited with the County Treasurer, and suit thereon shall be brought at any time by the Solicitor or any person for whose benefit the same is given; and in case the conditions thereof, or any of them, shall be violated, the principal and sureties thereon shall also be jointly and severally liable for all civil damages, costs and judgments that may be obtained against the principal in any civil action brought by wife, child, parent, guardian, employer or other person under the provision of the law. All other moneys collected for breaches of such bond shall be distributed as other funds arising from the Dispensary. Said bond shall be approved as other official bonds for the County.

Section 7. There may be one or more County Dispensers appointed for each County, the place of business of each of whom shall be designated by the County Board, but the State Board of Control must give consent before more than one Dispenser can be appointed in any County; and when the County Board designates a locality for a Dispensary, twenty days' public notice of which shall be given, it shall be competent for a majority of the voters of the township in which such Dispensary is to be located to prevent its location in such township by signing a petition or petitions, addressed to the County Board, requesting that no Dispensary be established in that township. The County Board may in its discretion locate a Dispensary elsewhere than in an incorporated town in the Counties of Beaufort and Horry, and no others, except such as are authorized by special Act of the General Assembly: Provided, however, That any County, town or city wherein the sale of alcoholic liquors was prohibited by law prior to July 1, 1893, may secure the establishment of a Dispensary within its borders in the following manner: Upon petition signed by one-fourth of the qualified voters of such County, town or city wishing a Dispensary therein being filed with the County Supervisor or Town or City Council, respectively, they

shall order an election submitting the question of Dispensary or no Dispensary to the qualified voters of such County, town or city, which election shall be conducted as other special elections; and if a majority of the ballots cast be found and declared to be for a Dispensary, then a Dispensary may be established in said County, town or city: Provided, That Dispensaries may be established in the Counties of Williamsburg, Pickens and Marion and at Seneca and other towns now incorporated in Oconee County without such election or compliance with the other requirements of this Act: Provided, That nothing in this Act contained shall be so construed as to prohibit persons resident in Counties which shall elect to have no Dispensary from procuring liquors from Dispensaries in other Counties, or County Dispensers from shipping same to their places of residence under proper labels or certificates: Provided, further, That nothing in this Act shall be construed to repeal an Act entitled "An Act to allow the opening of Dispensaries in Pickens and Oconee Counties," approved December 18th, 1894.

Section 8. If the application for the position of Dispenser be granted, the appointment shall not be made until the applicant shall make and subscribe on oath, before some officer authorized by law to administer oaths, which shall be endorsed upon the bond, to the effect and tenor following: "I, ————————, do solemnly swear (or affirm) that I will well and truly perform all and singular the condition of the within bond, and keep and perform the trusts confided in me to purchase, keep and sell intoxicating liquors. I will not sell, give or furnish to any person any intoxicating liquors otherwise than is provided by law, and, especially, I will not sell or furnish intoxicating liquors to any minor, intoxicated person or persons who are in the habit of becoming intoxicated, and I will make true, full and accurate returns to the County Board of Control on the first Monday of each month of all certificates and requests made to or received by me, as required by law, during the preceding month; and such returns shall show every sale and delivery of such liquors made by me or for me during the month embraced therein, and the true signature to every request received and granted; and such returns shall show all the liquors sold or delivered to any and every person as returned." Upon taking said oath and the oath required by the Constitution, and filing bond as hereinbefore provided, the County Board of Control shall authorize him to keep and sell intoxicating liquors as in this Act provided, and every appointment so made shall specify the building, giving the street and number or location, in which intoxicating liquors may be sold by virtue of the same, and the length of time in which the same shall be in force, which in no

case shall exceed twelve months. Appointments made under this Act shall be deemed trusts reposed in the recipients thereof, not as a matter of right, but of confidence, and may be revoked upon sufficient showing by order of the County Board of Control; and upon the removal of any County Dispenser, or upon demand of the County Board of Control, he shall immediately turn over to the County Board of Control all liquors and other property in his possession belonging to the State or County. Said County Board of Control shall be charged with the duty of prosecuting the County Dispenser or any of his employees who may violate any of the provisions of this Act. On the death, resignation or removal of a County Dispenser, or expiration of his term of office, the County Board shall appoint his successor.

Section 9. The County Board of Control shall use as their office the office of the County Supervisor of their County and shall elect one of their number as Chairman and a clerk of the said County Board of Control. The County Board shall preserve as a part of the records and files of their office all petitions, bonds and other papers pertaining to the appointment of Dispensers and keep suitable books in which bonds shall be recorded. The books shall be furnished by the County like other public records. The County Board of Control shall designate or provide a suitable place in which to sell the liquors. The members of the County Board of Control shall meet once a month or oftener, on the call of the Chairman, and each member of the Board shall receive a per diem of two dollars and five cents mileage each way, but they shall not receive compensation for more than thirty days in any one year, except in the County of Charleston, where they shall not receive compensation for more than sixty days in any one year, and in Barnwell County not more than fifty days in any one year. They shall, upon the approval of the State Board of Control, employ such assistants for the County Dispenser as may be necessary. The Dispenser and his assistants shall receive such compensation as the State Board of Control may determine. All profits, after paying all expenses of the County Dispensary, shall be paid, one-half to the County Treasurer and one-half to municipal corporation in which it may be located, such settlements to be made quarterly: Provided, That if the authorities of any town or city, in the judgment of the State Board of Control, do not enforce this law, the State Board may withhold the part going to the said town or city and use it to pay State Constables or else turn it into the County treasury. All moneys received by the County Dispenser belonging to the State shall be forwarded on Monday of each week to the State Treasurer,

and at the same time the County Dispenser shall forward to the State Board of Control a duplicate statement of the remittance so made to the State Treasurer. On the same day of each week the County Dispenser shall deposit with the County Treasurer the portion of all the moneys received by him belonging to the County and to the municipal authorities in which the Dispensary is located. The County Treasurer shall give his receipt therefor, and hold the same until the quarterly settlement hereinbefore provided for is had. The quarterly settlements herein provided for shall be made on the fourth Monday in the months of March, June, September and December in each year. Such settlements shall be made in the presence of the County Auditor, who shall make a memorandum of the items thereof and forward the same to the State Board of Control. The Mayor or Intendant of the city or town in which the Dispensary is located may also attend such settlement: Provided, That in Counties where Dispensaries are established in other than incorporated cities or towns the County shall get all profits that would otherwise go to such cities and towns: Provided, That in the County of Barnwell the clerk of the Board of County Commissioners shall be the clerk of the Board of Control.

Section 10. Before selling or delivering any intoxicating liquors to any person a request must be presented to the County Dispenser, printed or written in ink, dated of the true date, stating that he or she is of age and the residence of the signer, for whom or whose use it is required, the quantity and kind required and his or her true name; and the request shall be signed by the applicant in his own true name and signature, attested by the County Dispenser or his clerk who receives and files the requests. But the requests shall be refused if the County Dispenser filling it personally knows the person applying is a minor, that he is intoxicated, or that he is in the habit of using intoxicating liquors to an excess; or if the applicant is not so personally known to said County Dispenser, before filling said order or delivering said liquor he shall require the statement of a reliable and trustworthy person of good character and habits, known personally to him, that the applicant is not a minor and is not in the habit of using intoxicating liquors to excess.

Section 11. Requests for purchase of liquor shall be made upon blanks furnished by the County Auditor, in packages of one hundred each, to the County Dispenser, from time to time as the same shall be needed, and shall be numbered consecutively by the Auditor. The blanks aforesaid shall be furnished to the County Auditor by the State Board of Control, in uniform books like bank checks, and the date of delivery shall be endorsed by the County Auditor on

each book and receipt taken therefor and preserved in his office. The Dispenser shall preserve the application in the original form consecutively by the Auditor. When return thereof is made the County Auditor shall endorse thereon the date of return, and file and preserve the same, to be used in the quarterly settlements between such Dispenser and the County Treasurer. All unused or mutilated blanks shall be returned or accounted for before other blanks are issued to such County Dispenser.

Section 12. On or before the tenth day of each month each Dispenser shall make full returns to the County Auditor of all requests filled by him and his clerks during preceding month, upon blanks to be furnished by the State Board of Control for that purpose, and accompany the same with an oath, duly taken and subscribed before the County Auditor or a Notary Public, which shall be in the following form, to wit: I, ————, being duly sworn, state on oath that the request for liquors herewith returned are all that were received and filled at my place of business under my permit during the month of ————, 189—; that I have carefully preserved the same, and that they were filled up, signed and attested at the date shown thereon, as provided by law; that said requests were filled by delivering the quantity and kind of liquors required, and that no liquors have been sold or dispensed under my permit during said month except as shown by the request herewith returned; and that I have faithfully observed and complied with the provisions of my bond and oath taken by me, thereon endorsed, and with all the laws relating to my duties in the premises.

Section 13. Upon failure of any Dispenser to make returns to the Auditor as herein required, it shall be the duty of said Auditor to report such failure to the State Board of Control, and the said State Board of Control shall immediately order the County Board to summon said delinquent Dispenser to appear before them and show cause why his appointment should not be revoked; and if cause shall not be shown to the satisfaction of the County Board of Control, they shall immediately annul said appointment and give public notice thereof; and the Circuit Solicitor shall proceed to enforce the penalties prescribed in this Act for such violation against said County Dispenser at the next succeeding term of Court in the County in which such appointment is held; and any Dispenser who shall sell or dispose of any intoxicating liquors after his appointment shall have been revoked shall, upon conviction thereof, be fined not less than five hundred (500) dollars and be imprisoned for six months. If any Dispenser or his clerk shall procure any intoxicating liquors from any other person except the State Commissioner, or if he or they

or any person or persons in his or their employ, or by his or their direction, shall sell or offer for sale any liquors other than such as have been furnished by the State Commissioner, or shall adulterate, or cause to be adulterated, any intoxicating spirituous or malt liquors which he or they may keep for sale under this Act, by mixing with some coloring matter or any drug or ingredient whatever, or shall mix the same with other liquors of different kind or quality, or with water, or shall sell or expose for sale such liquors so adulterated, knowing it to be such, or shall change the label upon any box, bottle or package, he or they shall be guilty of a misdemeanor and be fined in a sum of not less than two hundred dollars or imprisoned for not less than six months. If any County Dispenser shall misappropriate, misuse or otherwise wrongfully dispose of any moneys or other property belonging to the State, County or municipality, he shall upon conviction be punished as in case of breach of trust with fraudulent intent.

Section 14. That any County Dispenser who, in violation of his oath of office, sells or furnishes intoxicating liquors to any minor, intoxicated person, or person who is in the habit of becoming intoxicated, or fails to make full and accurate returns as required by law, showing the true signature to every request for liquor by him received and granted, or sells liquors to any person without first requiring the written requests therefor to be filled out and signed as provided by law or the regulations of the State Board of Control, that on such information given by any person, with sufficient evidence, it shall be the duty of the Solicitor to bring suit in the name of the County for two hundred dollars' damages on the bond of the said County Dispenser against the principal and sureties of said bond for each of such violations, for which said principal and sureties shall be liable, jointly and severally, together with all cost and judgments pertaining to the suit. And on judgments given against him the said County Dispenser shall be immediately deprived of his office as Dispenser, and his principal and sureties aforesaid shall remain further liable, jointly and severally, to the extent of their bond, to all civil damages, costs and judgments which may be obtained against the principal in any civil action brought by wife, child, parent, guardian, employee, or other person, under the provisions of the law: Provided, That if the said County Dispenser can show to the satisfaction of a jury by way of defense that the said intoxicating liquor was obtained from him by the infant, intoxicated person, or person in the habit of becoming intoxicated, by fraudulent and deceitful representations, the person making such fraudulent and deceitful representation shall be guilty of a misdemeanor,

and be fined in a sum of not less than two hundred dollars or imprisonment for not less than six months.

Section 15. No person, firm, association or corporation shall manufacture for sale, or keep for sale, exchange, barter, or dispense, any liquors containing alcohol, for any purpose whatsoever, otherwise than is provided in this Act. Any person, firm, association or corporation desiring or intending to manufacture or distill any liquors containing alcohol within this State shall first obtain from the State Board of Control a permit or license so to do; and it shall be unlawful for any such person, firm, association or corporation to manufacture or distill any liquors containing alcohol within this State without having such permit or license. Any violations of the terms of the permit or license shall authorize and warrant the seizure of the product on hand at any distillery or place where liquors containing alcohol are manufactured: Provided, The United States has no lien or claim upon the same. And in the application for a permit or license to manufacture liquors containing alcohol, the applicant shall give the State full power upon any violation of this Act to seize and take possession of any product on hand at the distillery or place where such applicant shall manufacture such liquors, and shall authorize the State to pay the United States Government the tax upon the same if unpaid, and to dispose thereof as provided herein for contraband goods. Every package, barrel or bottle of such liquor shipped beyond the limits of this State shall have thereon the certificate of the State Board of Control allowing same, otherwise it shall be liable to confiscation, and the railroad carrying it shall be punished as in Section three: And provided, That any person shall have the right to make wine for his or her own use from grapes or other fruits. The Inspector appointed by the State Board of Control, as herein provided, shall have the right to enter and examine, at any and all times not forbidden by the United States laws, any distillery, brewery or place where liquors containing alcohol is manufactured within this State. Any manufacturer, distiller or brewer who may refuse to allow the Inspector or Constable to enter and examine his place of business and its appurtenances at such times as the Inspector or Constable may deem proper, shall forfeit his permit or license.

Section 16. Every Dispenser shall keep a strict account of all liquors received by him from the State Commissioner, in a book kept for that purpose, which shall be subject at all times to the inspection of the Circuit Solicitor, any peace officer or grand juror of the County, or of any other citizen, and such book shall show the amount and kind of liquors procured, the date of receipt and amount

sold, and the amount on hand of each kind for each month. Such book shall be produced by the party keeping the same, to be used as evidence on trial of any prosecution against him on notice duly served that the same will be required as evidence.

Section 17. The payment of the United States special tax as a liquor seller, or notice of any kind in any place of resort, or in any store or shop, indicating that alcoholic liquors are there sold, kept or given away, shall be held to be prima facie evidence that the person or persons paying said tax and the parties displaying such notices are acting in violation of this Act, and unless said person or parties are selling under appointment as prescribed by this Act, they shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment for a term of not less than three months nor more than twelve months. Conviction in the United States Courts of illicit sales of liquors shall be taken as prima facie evidence of violation of the provisions of this Act, and any distiller or manufacturer of liquors containing alcohol so convicted in the United States Courts shall, by reason of such conviction, forfeit the permit or license granted him by the State Board of Control in addition to the other penalties herein provided.

Section 18. Licensed druggists conducting drug stores and manufacturers of proprietary medicines are hereby authorized to purchase of Dispensers of the Counties of their residence, intoxicating liquors (not including malt) for the purpose of compounding medicines, tinctures and extracts that cannot be used as a beverage. The Dispenser shall not charge licensed druggists more than ten per cent. net profits for liquors so sold. Such purchaser shall keep a record of the uses to which the same are devoted, giving the kind and quantity so used, and quarterly they shall make and file with the County Auditor and with the County Board of Control sworn reports, giving a full and true statement of the quantity and kinds of such liquors purchased and used, the uses to which the same have been devoted, and giving the name of the Dispenser from whom the same was purchased, and the dates and quantities so purchased, together with an invoice of each kind still in stock and kept for such compoundings. If said licensed druggist shall sell, barter, give away or exchange, or in any manner dispose of, said liquors for any purpose other than authorized by this Section, he shall upon conviction forfeit his license and be liable to all penalties, prosecutions and proceedings at law and in equity provided against persons selling without authority, and upon such conviction the Clerk of the Court shall, within ten days after such judgment or order, transmit to the Board of Pharmaceutical Examiners the certified record

thereof, upon receipt of which the said Board shall strike the name of the said druggist from the list of pharmacists and revoke his certificate: Provided, That nothing herein contained shall be construed to authorize the manufacture or sale of any preparation or compound, under any name, form or device, which may be used as a beverage which is intoxicating in its character: And provided, further, That the State Commissioner shall be authorized to sell to manufacturing chemists and wholesale druggists alcohol by the barrel at not exceeding ten per cent. above the net cost.

Section 19. If any person shall make any false or fictitious signatures or sign any name other than his or her own to any paper required to be signed by this Act without being authorized to do so, or make any false statement in any paper, request or application signed to procure liquor under this Act, the person so offending shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than twenty-five dollars or be imprisoned not more than thirty days.

Section 20. If any Dispenser or his clerk shall make false oath touching any matter required to be sworn to under the provisions of this Act, the person so offending shall, upon conviction, be punished as provided by law for perjury. If any County Dispenser shall procure any intoxicating liquors from any other person than the State Commissioner, or make any false return to the County Auditor, or use any request for liquors for more than one sale, in any such case he shall be deemed guilty of a misdemeanor and upon conviction be punished by a fine of five hundred dollars or six months' imprisonment.

Section 21. Every person who shall, directly or indirectly, keep or maintain by himself, or by associating or combining with others, or who shall in any manner aid, assist or abet in keeping or maintaining, any club room or other place in which any intoxicating liquors are received or kept for use, barter or sale as a beverage, of for distribution or division among the members of any club or association by any means whatever, and every person who shall receive, barter, sell, assist, or abet another in receiving, bartering or selling, any alcoholic liquors so received or kept, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment for a term of not less than three months nor more than twelve months: Provided, That the State Board of Control shall have the power, upon a proper showing, and under such rules as they may adopt, to exempt hotels where tourists or health-seekers resort from being considered nuisances or as violating

this Act by reason of any manager of such hotels dispensing liquors bought from the Dispensary by the bottle, either night or day, but before any such exemption shall be granted the State Board of Control shall require the manager of such hotel to give a good and sufficient bond in the penal sum of three thousand dollars conditioned for the observance of all the rules, regulations and restrictions prescribed and imposed by the said Board and with all the requirements of this Act, and it shall be lawful for any Constable or officer thus employed under this Act to enter such hotels and search it for contraband liquors at any time, day or night, without a warrant.

Section 22. All places where alcoholic liquors are manufactured, sold, bartered or given away in violation of this Act, or where persons are permitted to resort for the purpose of drinking alcoholic liquors as a beverage, or where alcoholic liquors are kept for sale, barter or delivery in violation of this Act, are hereby declared to be common nuisances, and any person may go before any Magistrate in the County and swear out an arrest warrant on personal knowledge or on information and belief, charging said nuisance, giving the names of witnesses against the keeper or manager of such place and his aids and assistants, if any, and such Magistrate shall direct such arrest warrant either to the Sheriff of the County or to any special Constable, commanding said defendant to be arrested and brought before him to be dealt with according to law, and shall issue a search warrant in which the premises in question shall be particularly described, commanding such Sheriff or Constable to thoroughly search the premises in question and to seize all alcoholic liquors found thereon, and dispose of them as provided in Section 31, and to seize all vessels, bar fixtures, screens, bottles, glasses and appurtenances apparently used or suitable for use in retailing liquors, to make a complete inventory thereof, and deposit the same with the Sheriff. That under the arrest warrant the defendant shall be arrested and brought before such Magistrate, and the case shall be disposed of as in case of other crimes beyond his jurisdiction, except that when he commits or binds over the parties for trial to the next term of Court of General Sessions for the County he shall make out every paper in the case in duplicate and file one with the Clerk of the Court for the County, and immediately transmit the other to the Solicitor of the Circuit, whereupon said Solicitor shall at once apply to any Circuit Judge at chambers within that Circuit, or to the nearest Circuit Judge if there be none in that Circuit, for an order restraining the defendants, their servants or agents, from keeping, receiving, bartering, selling or giving away any alcoholic liquors until the further order of the Court. Such Circuit Judge is

hereby authorized, empowered and required to grant the said restraining order without requiring a bond or undertaking upon the hearing or receipt by him of said papers from the Court of the said Magistrate by the hands of the Solicitor; and any violation of said restraining order before the trial of the case shall be deemed a contempt of Court and punished as such by said Judge or Court, or any other Circuit Judge, as for the violation of an order of injunction. Upon conviction of said defendants of maintaining said nuisance at the trial, they or any of them shall be deemed guilty of a misdemeanor, punishable by imprisonment in the County jail for a term of not less than three months or a fine of not less than two hundred dollars, or by both, in the discretion of the Court, and the restraining order shall be made perpetual. The articles covered by the inventory, which were retained by the Sheriff, shall be forfeited to the State and sold, and the net proceeds sent to the State Treasurer, and the Sheriff shall forthwith proceed to dispose of the alcoholic liquors covered by said inventory as provided for in this Act as when other liquors are seized. Liquors seized as hereinbefore provided, and the vessels containing them, shall not be taken from the custody of the officers in possession of the same by any writ of replevin or other process while the proceedings herein provided are pending. No suit shall lie for damages alleged to arise by seizure and detention of liquors under this Act. Any person violating the terms of any restraining order granted in such proceedings shall be punished for contempt by a fine of not less than two hundred dollars nor more than one thousand dollars, and by imprisonment not less than ninety days nor more than one year.

In contempt proceedings arising out of the violation of any injunction granted under the provisions of this Act, the Court, or in vacation any Judge thereof, shall have power to try summarily and punish the party or parties guilty, as required by law. The affidavits upon which the attachment for contempt issues shall make a prima facie case for the State. At the hearing upon the charge of contempt, evidence may be oral or in the form of affidavits, or both. The defendant shall not necessarily be discharged upon his denial of the fact stated in the moving papers. The Clerk of the Court shall, upon the application of either party, issue subpœnas for witnesses, and, except as above set forth, the practice in such contempt proceedings shall conform as nearly as may to the practice in the Court of Common Pleas. That when any Solicitor neglects or refuses to perform any duty, or to take any steps required of him by any of the provisions of the preceding Section, or by any of the provisions of this Act, the Attorney General, on his own motion, or by

request of the Governor, shall in person or by his Assistant, proceed to the locality and perform such neglected duty, and take such steps as are necessary in the place of such Solicitor, and at his discretion to cause a prosecution to be instituted, not only in the matter so neglected, but also a prosecution against the Solicitor for malfeasance or misfeasance in office, or for official misconduct, or for other charges justified by facts, and to pursue the prosecution to the extent of a conviction and dismissal from office of any such Solicitor.

And in such event the Attorney General shall be, and is hereby, authorized and empowered to appoint one or more additional assistants, who shall each have while actually employed the same compensation, to be paid from the litigation fund of the Attorney General.

Any duty herein imposed upon a Solicitor may be performed with equal force and effect by the Attorney General or other person authorized by him to perform such duty.

Section 23. The manager of every registered distilley of liquor in this State shall report quarterly to the State Board of Control, showing the number of gallons of each kind of liquor on hand, manufactured or disposed of during the quarter; and if the said report fail to correspond with the return of said distiller to the United States Revenue Collector of this State, or it is shown that said manager has disposed of liquor contrary to this Act, said distillery shall be deemed to be a common nuisance, and the said manager and his aiders and assistants and the premises shall be proceeded against as in this Act provided as to places where liquors are sold contrary to this Act.

Section 24. In all places where liquors are unlawfully kept or stored, the same not being in an open house or exposed to view, and a search being necessary, upon affidavit to that effect, or on information and belief that contraband liquor is in such place, a search warrant may be issued by a Justice, Judge or Magistrate, or Mayor or Intendant of a city or town, to whom application is made, empowering a Constable, or any person who may be deputized, to enter the said place by day time, or in the night time, and to search and examine the said premises for the purpose of seizing the said contraband liquors therein concealed, kept or stored, which said liquor when so seized shall be disposed of as hereinafter provided.

Section 25. That any of the liquors set forth in Section one (1) of this Act, which are contraband, may be seized and taken without warrant by any Constable, Sheriff or policeman while in transit or after arrival, whether in possession of a common carrier, depot agent, express agent, private person, firm, corporation or association, and reported to the State Commissioner at once, who shall dis-

pose of the same as hereinafter provided: Provided, That liquors purchased outside the State, owned and conveyed as personal baggage, shall be exempt from seizure when the quantity does not exceed one gallon.

Section 26. That the possession of said illicit liquors is hereby prohibited and declared unlawful, and any obligation, note of indebtedness, contracted in their sale or transportation is declared to be absolutely null and void, nor shall any action or suit for the recovery of the same be entertained in any Court in this State.

Section 27. That the proceedings against liquor so illegally kept, stored, sold, delivered, elsewhere than at his or her residence, transported or being transported, shall be considered a proceeding in rem, unless otherwise herein provided.

Section 28. That the carriage, transportation, possession, removal, sale, delivery or acceptance of any of the said liquors or liquids in any package, cask, jug, box or other package, under any other than the proper name or brand known to the trade as designating the kind and quality of the contents of the casks, packages or boxes containing the same, or the causing of such carriage, transportation, possession, removal, sale, delivery or acceptance, shall work the forfeiture of said liquors or liquids and casks or packages, and the person or persons so offending, knowingly, be subject to pay a fine of not less than one hundred dollars nor more than five hundred dollars, or imprisonment for the term of not less than six months nor less than one year, and the wrongful name, address, mark, stamp or style on such liquor when seized shall be considered evidence prima facie of guilt. The books and way bills of the common carrier may be examined to trace said liquor to the shipper, who shall be liable, upon conviction, in like penalty.

Section 29. That all Constables, Deputy Constables, Sheriffs, Magistrates or municipal policemen shall have the right, power and authority, and it shall be their duty, whenever they are informed or suspect that any such suspicious package in possession of a common carrier contains alcoholic liquors or liquids, to detain the same for examination for the term of twenty four hours without any warrant or process whatever. Any Constable, Deputy Constable, Sheriff or Magistrate who shall neglect or refuse to perform the duties required by this Act shall be subject to suspension by the Governor. Any Sheriff or Magistrate seizing any alcoholic liquors or liquids as required by this Section shall be paid one-half the value of said liquor or liquids so soon as the same shall have been received at the State Dispensary, approved and disposed of according to law.

Section 30. That any interference by any person with, obstruction or resistance of, or abusive language to, any officer or person in the discharge of the duties herein enjoined, or the use of abusive language by any such officer or person to any other person or persons, shall be deemed a misdemeanor, and the person or persons so offending shall, upon conviction, be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or imprisoned for a term of not less than three months nor more than twelve months.

Section 31. In all cases of seizure of any goods, wares, merchandise, or any other property, hereafter or heretofore, made as being subject to forfeiture under any provisions of this Act or any former Act, which in the opinion of the officer or person making the seizure are of the appraised value of fifty dollars or more, the said officer or person shall proceed as follows: First. He shall cause a list containing a particular description of the goods, wares or merchandise seized to be prepared in duplicate and an appraisement thereof to be made by three sworn appraisers to be selected by him, who shall be respectable and disinterested citizens of the State of South Carolina residing within the county wherein the seizure was made. Said list and appraisement shall be properly attested by the said officer or person and the said appraisers, for which service each of the said appraisers shall be allowed the sum of one dollar per day, not exceeding five days, to be paid by the State Board of Control. Second. If the said goods are believed by the officer making the seizure to be of less value than fifty dollars, no appraisement shall be made. The said officer or person shall proceed to publish a notice for three weeks, in writing, at three places in the county where the seizure was made, describing the articles and stating the time and place and cause of their seizure, and requiring any person claiming them to appear and make such claim within thirty days from the date of the first publication of such notice. Third. That any person claiming the liquors or other property so seized as contraband within the time specified in the notice may file with the State Board of Control a claim, stating his interest in the articles seized, and may execute a bond to the State Board of Control in the penal sum of five hundred dollars, with sureties to be approved by the State Board of Control, conditioned that in the case of condemnation of the articles so seized the obligors shall pay all the costs and expenses of the proceedings to obtain such condemnation; and upon the delivery of such bonds to the State Board of Control he shall transmit the same with the duplicate list or description of the goods seized to the Solicitor of the Circuit in

which such seizure was made, and the said Solicitor shall prosecute the case to secure the forfeiture of said contraband liquors or liquids in the Court having jurisdiction. Fourth. If no claim is interposed and no bond given within the time above specified, such liquors shall be forfeited without further proceedings, and the State Commissioner shall have the said liquors tested by the State Chemist, and if pure shall furnish the same through the State Dispensary. If not pure the same shall be destroyed by the Chemist of the South Carolina College, who shall make a report to the State Board of Control of the amount and kinds of liquors so destroyed: Provided, That in seizures in quantities less in value than fifty dollars of such illicit liquor or liquors, the same may be advertised with other quantities at Columbia by the State Board of Control and disposed of as hereinbefore provided: Provided, further, That the claimants of such liquors may give bond in one hundred dollars as when the value is fifty dollars or over, and shall bear the burden of showing before a Magistrate that they have complied with the law and that the liquor is not liable to seizure.

Section 32. That all fermented, distilled or other liquors, or liquids containing alcohol, transported into this State, or remaining herein for use, sale, consumption, storage, or other disposition, shall, upon introduction and arrival in this State, be subject to the operation and effect of this law to the same extent and in the same manner as though such liquors or liquids had been produced in this State.

Section 33. That no person, except as provided in this Act, shall bring into this State, or transport from place to place within this State, by wagon, cart or other vehicle, or by any other means or mode of carriage, any liquor or liquids containing alcohol, under a penalty of one hundred dollars or imprisonment for thirty days for each offense, upon conviction thereof, as for a misdemeanor. Any servant, agent or employee of any persons, corporations or associations doing business in this State as a common carrier, or any person whatever (except an officer seizing or examining the same), who shall remove any intoxicating liquors from any railroad car, vessel or other vehicle of transportation at any place other than the usual and established stations, wharves, depots or places of business of such common carriers within some incorporated city or town where there is a Dispensary, or who shall aid in or consent to such removal, or attempt to remove, shall upon convictian be sentenced to pay a fine of not less than one hundred dollars nor more than five hundred dollars, or imprisonment for a term of not less than three months nor more than twelve months: Provided, That said penalty

shall not apply to any liquor in transit when changed from car to car to facilitate transportation across the State: Provided, That this Section does not apply to liquors purchased from a Dispensary and bearing the proper label or certificate. All liquors in this State, except Dispensary liquors and those passing through this State, consigned to points beyond this State shall be deemed contraband, and may be seized in transit without warrant. And any steamboat, sailing vessel, railroad, express company or other common carrier transporting or bringing into this State, for sale or use therein, except by the Dispensary, shall suffer a penalty of five hundred dollars and costs for each offense, to be recovered by the Solicitor of the Circuit or the Attorney General by an action brought therefor in any Court of competent jurisdiction. The State Constable, Sheriff, municipal police or any lawful Constable may enter any railroad car, or express car, or depot, or steamboat, or other vessel, without warrant and make search for such contraband liquors, and may examine the way bills and freight books of said common carriers, and any one interfering with or resisting such officer, shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or imprisonment for a term of not less than three months nor more than twelve months.

Section 34. That any person detected openly or in the act of violating any of the provisions of this Act, shall be liable to arrest without warrant: Provided, A warrant shall be procured within a reasonable time thereafter.

Section 35. That in case of conviction of violations of any of the Sections of this Act where punishment is not especially provided for, the person or persons or corporations so convicted shall be punished in the discretion of the Court trying the same. All alcoholic liquors, other than domestic wine, which do not have on the packages in which they are contained the label and certificates going to show that they have been tested by the Chemist and purchased from a State officer authorized to sell them, are hereby declared contraband, and on seizure will be forfeited to the State, as provided in Section 31: Provided, That this Section shall not apply to liquor held by the owners of registered stills in bonded warehouses. Persons having liquor which they wish to keep for their own use may throw the protection of the law around the same by furnishing an inventory of the quantity and kinds to the State Commissioner and applying for certificates to affix thereto.

Any persons affixing or causing to be affixed to any package containing alcoholic liquors, any imitation stamp or other printed or engraved label or device than those furnished by the State Board of

Control shall, for each offense, be liable to a penalty of ten days' imprisonment or twenty-five dollars' fine.

Section 36. Every person who dispossesses or rescues from a Constable or other officer, or attempts so to do, any alcoholic liquor taken or detained by such officer charged with the enforcement of this law shall, upon conviction, be imprisoned not less than three months nor more than twelve months, or pay a fine of not less than one hundred dollars nor more than five hundred dollars.

Section 37. Any person handling contraband liquors in the night time or delivering the same shall be guilty of a misdemeanor, and on conviction shall be punished by imprisonment for not less than three months nor more than twelve months, or by a fine of not less than one hundred dollars nor more than five hundred dollars.

Section 38. Any wagon, cart, boat, or any other conveyance, together with horses, mules, or other animal or animals and harness, accompanying the same, transporting liquors at night, other than regular passenger or freight steamers and railway cars, shall be liable to seizure and confiscation, and to that end the officer shall cause the same to be duly advertised and sold and the proceeds sent to the State Treasurer.

Section 39. Every Dispenser when he sells a package containing liquor shall put a cross mark in ink on the label or certificate thereon extending from the top to the bottom and from side to side. When any liquor is seized because it has not the necessary certificates and labels required by this Act, the burden of proof shall be upon the claimant of said spirits to show that no fraud has been committed and that the whiskey is not contraband.

Section 40. That any railroad, steamboat, express company or other common carrier shall incur a penalty of treble the invoice price of any alcoholic liquors lost or stolen in transit to or from the Dispensary, whether shipped as released or not, such penalty to be recovered by action in any Court of competent jurisdiction.

Section 41. That it shall be unlawful for any person to take or to solicit orders, or to receive money from other persons for the purchase or shipment of any alcoholic liquors for or to such other persons in this State, except for liquors to be purchased and shipped from the Dispensary, and any person violating this Section, upon conviction, shall be deemed guilty of a misdemeanor, and shall be punished by imprisonment for a term of not less than three months nor more than twelve months, or by a fine of not less than one hundred dollars nor more than five hundred dollars.

Section 42. It shall be the duty of Sheriffs, Deputy Sheriffs and Constables having notice of the violation of any of the provisions of

this Act to notify the Circuit Solicitor of the fact of such violation, and to furnish him the name of any witness within their knowledge by whom such violation can be proven. If any such officer or Solicitor shall willfully fail to comply with the provisions of this Section, he shall, upon conviction, be fined in a sum not less than one hundred dollars nor more than five hundred dollars, and such conviction shall work a forfeiture of the office held by such person, and the Court before whom such conviction is had shall, in addition to the imposition of the fine aforesaid, order and adjudge the forfeiture of his said office.

Section 43. That in any indictment for the sale of intoxicating liquors it shall be competent to charge a series of sales on the same or on divers days up to the finding of the true bill to one person, or to different persons, naming one and stating the others to be unknown, in the same count, as was formerly the practice in indictments for retailing liquor without license in this State, and the prosecuting officer shall not be required to elect which particular sale he will rely on, but may offer proof of all, and proof of any one or of all the sales will sustain a verdict: Provided, Upon a trial and conviction or acquittal no other bill of indictment will lie for any sale occurring prior to bill found on the case tried, and that punishment shall be in such cases as for one sale: Provided, further, That this Section shall not be so construed as to prevent the prosecuting officer from giving out several bills of indictment for several sales in the first instance if he thinks best to do so.

Section 44. That whenever in this Act it is provided that process shall issue upon an affidavit based on information and belief, the affidavit shall contain a statement setting forth the sources of information, the facts and grounds of belief upon which the affiant bases his belief: Provided, That it shall not be necessary to set forth the sources of information, the facts and grounds of belief in the affidavit upon which a warant of arrest shall issue, but it shall only be necessary in cases of search warrants.

Section 45. That Chapter I, Title VII, of the Code of Civil Procedure of this State, entitled "Of Provisional Remedies in Civil Actions," shall not apply to any officer or person having duties to perform under this Act, and in no case shall an action lie against any such officer or person for damages to person or property, as provided in said Chapter.

Section 46. The Governor shall have authority to appoint one or more State Constables at a salary of not more than two dollars per day and such expenses as the Governor may deem proper when on duty, and two Chief Constables at not more than three dollars each

per day and such expenses as the Governor may deem proper, and also one or more detectives at reasonable compensation, to see that this Act is enforced, the same to be paid from the Dispensary fund in the same manner as the salary of the State Commissioner.

Section 47. That this Act shall be a public Act and shall go into effect immediately upon its approval by the Governor, and that all Acts or parts of Acts inconsistent with Act be, and are hereby, repealed.

Section 48. The State Board of Control elected under this Act shall not take charge until first of April, 1896.

Approved the sixth day of March, A. D. 1896.

ACT OF 1897---NO. 340.

AN ACT to amend an Act entitled "An Act to provide for the election of a State Board of Control, and to further regulate the sale, use, consumption, transportation and disposition of intoxicating and alcoholic liquors or liquids in this State," and prescribe penalties for violation of the Dispensary Laws, and to police the same, approved March 6th, 1896, so as to regulate the importation of liquors for personal use.

Section 1. Be it enacted by the General Assembly of the State of South Carolina, That an Act entitled "An Act to provide for the election of the State Board of Control, and to further regulate the sale, use, consumption, transportation and disposition of intoxicating and alcoholic liquors or liquids in the State, and prescribe further penalties for violation of the Dispensary laws, and to police the same," approved March 6th, 1896, be amended as follows: In Section 1 strike out all of said Section after the word "offense" on line 22 of the printed Act and substitute therefor the following: All alcoholic liquors in this State, whether manufactured within this State or elsewhere, not having been tested by the chemist of the South Carolina College and found to be pure and free from poisonous, hurtful or deleterious matters, are hereby declared to be of a detrimental character, and their use and consumption are against the morals, good health and safety of the State, and all such liquors may be seized wherever found, without a warrant, and disposed of as hereinafter provided. Any person resident in this State intending to import for personal use and consumption any spirituous, malt, vinous, fermented, brewed, or other liquor containing alcohol from any other State or foreign country shall first certify to the chemist of

the South Carolina College the quantity and kind of liquor proposed to be imported, together with the name and place of business of the person, firm or corporation from whom it is desired to purchase, accompanying such certificate with a statement that the proposed consignor has been requested to forward a sample of such liquor to the said chemist at Columbia, South Carolina. Upon receipt of said sample, the said chemist shall immediately proceed to test the same, and if found to be pure and free from any poisonous, hurtful or deleterious matter, he shall issue a certificate to that effect, stating therein the names of the proposed consignor and consignee and the quantity and kind of liquor proposed to be imported thereunder, which certificate shall be dated and forwarded by the said chemist post paid to the proposed consignor at his place of business. The said consignor shall cause such certificate to be attached to the package containing the liquor when it is shipped into this State, and no package bearing such certificate shall be liable to seizure and confiscation, but any package of spirituous, malt, vinous, fermented, brewed, or other liquor or liquid containing alcohol imported into this State without such certificate, or any package containing liquor other than that described in the certificate thereto attached, or any package shipped by or to any person or persons not named in such certificate, shall be seized and confiscated as provided in this Act. Any certificate obtained from the chemist as herein provided shall be used within sixty days after the date of its issue, and shall be invalid thereafter. It shall be unlawful to use said certificate for more than one importation, and any person attempting to counterfeit said certificate or to make any improper use thereof, or who shall make any false statement in obtaining, or attempting to obtain, the same shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by imprisonment for not less than thirty days nor more than twelve months or pay a fine of not less than one hundred nor more than one thousand dollars. Any person or persons convicted of selling or otherwise unlawfully disposing of any liquor imported under the provisions of this Section, shall suffer double the punishment provided for a sale in violation of other provisions of this Act. All expenses incurred in enforcing the provisions of this Section, including compensation for such assistant chemists as may be necessary to make prompt analyses, and the express charges on samples, shall be paid by the State Board of Control hereinafter provided for as an expense of the State Dispensary established by this Act. If the chemist of the South Carolina College shall willfully fail or refuse to make or have made an analysis of any sample sent to him in accordance with the provisions of this

Section, he shall, upon conviction thereof before a Court of competent jurisdiction, be fined one hundred dollars for each offense." So that said Section when amended will read:

"Section 1. Be it enacted by the General Assembly of the State of South Carolina, That the manufacture, sale, barter, or exchange, receipt or acceptance for unlawful use, delivery, storing and keeping in possession within this State of any spirituous, malt, vinous, fermented, brewed (whether lager or rice beer), or other liquors, any compound or mixture thereof, by whatever name called or known, which contains alcohol and is used as a beverage, except as is hereafter provided, is hereby prohibited under a penalty of not less than three nor more than twelve months at hard labor in the State Penitentiary, or pay a fine of not less than $100 nor more than $500, or both fine and imprisonment, in the discretion of the Court, for each offense. All alcoholic liquors in this State, whether manufactured within this State or elsewhere, not having been tested by the chemist of the South Carolina College and found to be pure and free from poisonous, hurtful and deleterious matters, are hereby declared to be of a detrimental character, and their use and consumption are against the morals, good health and safety of the State, and all such liquors may be seized wherever found, without a warrant, and disposed of as hereinafter provided. Any person resident in this State intending to import for personal use and consumption any spirituous, malt, vinous, fermented, brewed or other liquor containing alcohol from any other State or foreign country, shall first certify to the chemist of the South Carolina College the quantity and kind of liquor proposed to be imported, together with the name and place of business of the person, firm or corporation from whom it is desired to purchase, accompanying such certificate with a statement that the proposed consignor has been requested to forward a sample of such liquor to the said chemist at Columbia, South Carolina. Upon receipt of said sample the said chemist shall immediately proceed to test the same, and if found to be pure and free from any poisonous, hurtful or deleterious matters, he shall issue a certificate to that effect, stating therein the names of the proposed consignor and consignee, and the quantity and kind of liquor proposed to be imported thereunder, which certificate shall be dated and forwarded by the said chemist post paid to the proposed consignor at his place of business. The said consignor shall cause such certificate to be attached to the package containing the liquor when it is shipped into this State, and no package bearing such certificate shall be liable to seizure and confiscation, but any package of spirituous, malt, vinous, fermented, brewed or other liquor or liquid containing alco-

hol imported into this State without such certificate, or any package containing liquor other than that described in the certificate thereto attached, or any package shipped by or to any person or persons not named in such certificate, shall be seized and confiscated as provided in this Act. Any certificate obtained from the chemist as herein provided shall be used within sixty days after the date of its issue and shall be invalid thereafter. It shall be unlawful to use said certificate for more than one importation, and any persons attempting to counterfeit said certificate or to make any improper use thereof or who shall make any false statement in obtaining or attempting to obtain the same shall be deemed guilty of a misdemeanor and upon conviction shall be punished by imprisonment for not less than thirty days nor more than twelve months, or pay a fine of not less than one hundred nor more than one thousand dollars. Any person or persons convicted of selling or otherwise unlawfully disposing of any liquor imported under the provision of this Act shall suffer double the punishment provided for a sale in violation of other provisions of this Act. All expenses incurred in enforcing the provisions of this Section, including compensation for such assistant chemists as may be necessary to make prompt analysis and the express charges on samples shall be paid by the State Board of Control hereinafter provided for as an expense of the State Dispensary established by this Act. If the chemist of the South Carolina College shall willfully fail or refuse to make or have made an analysis of any sample sent to him in accordance with the provisions of this Section, he shall, upon conviction thereof before a Court of competent jurisdiction, be fined one hundred dollars for each offense."

Amend Section 2 by striking out the word "use" on the 19th line of printed Act and substitute the word "sale" therefor after the word "lawful." So that the Section as amended will read:

"Section 2. A Board consisting of five members, to be known as the State Board of Control, shall be elected by the General Assembly at this session to carry out the provisions of this Act, the said Board to be composed of men not addicted to the use of intoxicating liquors. The terms of office of the Board so elected shall be for one, two, three, four and five years, respectively, and those elected shall determine by lot which shall take the respective terms. At the expiration of the term of office of each member, his successor shall be elected for a term of five years. They shall receive for their services the same per diem and mileage as members of the General Assembly. The State Board of Control shall devise and inaugurate such a system of bookkeeping and accounting as they may deem advisable, and shall

elect a clerk or bookkeeper who shall hold his office during the pleasure of the Board and shall receive as compensation for his services a salary of $1,500 per annum. The State Board of Control, under such rules and regulations as may be adopted by said Board, shall purchase all liquors for lawful sale in this State, and shall have the same tested and declared to be pure as hereinbefore and hereinafter provided."

Amend Section 3 by striking out the word "use" on the 9th line of the printed Act and substitute the word "sale" therefor after the word "lawful;" also amend by adding on the 27th line of the printed Act, after the word "pure," the words "and free from poisonous, hurtful and deleterious matter;" also, amend by adding the words "sale and" on the 59th line, after the word "for." So that the Section as amended will read:

"Section 3. That the State Board of Control shall at the expiration of the term of the present Commissioner and at the expiration of every two years thereafter appoint a Commissioner, which appointment shall be submitted to the Senate at its next session for its approval; said Commissioner shall be believed by the State Board of Control to be an abstainer from intoxicants, and shall, under such rules and regulations as may be made by the State Board of Control, furnish all intoxicating liquors for lawful sale in this State to such persons as may be designated as dispensers thereof, to be sold as hereafter prescribed in this Act. Said Commissioner shall reside and have his place of business in the city of Columbia, in this State, and hold his office two years from his appointment and until another be appointed in his stead. He shall be subject to removal for cause by the State Board of Control. He shall qualify and be commissioned the same as other State officers and shall receive an annual salary of $2,500, payable from the Dispensary fund upon the warrant of the State Board of Control. He shall be allowed a bookkeeper, who shall be paid in the same manner a salary of $1,200, and such other assistants as, in the opinion of the Board of Control, may be deemed necessary. He shall not furnish to the County Dispensers any intoxicating or fermented liquors except such as have been tested by the chemist of the South Carolina College and declared to be pure and free from poisonous, hurtful and deleterious matters: *Provided*, That said Board of Control shall have authority to appoint such assistants as they may find necessary to assist the chemist of the South Carolina College in making the analyses required by this Act; and the said Board of Control may fix such reasonable compensation, if any, as they may deem proper for the services rendered by such chemist or such assistants. Each County Dispenser shall remit to the State Treasurer all moneys accru-

ing to the State from the sale of liquors under such rules as may be prescribed by the State Board of Control, and the State Treasurer shall keep a separate account with said fund, from which the State Board of Control shall draw from time to time upon warrants, or in such manner as they may provide, the amount necessary to pay the expenses incurred in conducting the business. All rules and regulations governing the said Commissioner or County Dispenser in the performance of any of the duties of his office, where the same are not provided for by law, shall be prescribed by the State Board of Control. The State Commissioner shall, before entering upon the duties of his office, execute a bond to the State Treasurer, with sufficient sureties, to be approved in the same manner as the bonds of other State officers in the penal sum of $10,000, for the faithful performance of the duties of his office: *Provided*, That any officer of the State Dispensary or of the County Dispensary shall have the right to give either a personal bond or a bond in a guarantee company, any rule or regulation to the contrary notwithstanding: *Provided*, The bond shall be approved as other official bonds are approved. In all purchases or sales of intoxicating liquors made as contemplated in this Act the State Board of Control shall cause a certificate to be attached to each and every package containing said liquors when the same is shipped to the State Commissioner from the place of purchase, or by State Commissioner to the County Dispensaries, certified by their official signatures and seal, which certificate shall state that liquors contained in said packages have been purchased by the State Board of Control for sale and use within the State of South Carolina, under the laws of said State, and shall also cause to be attached to all such liquors the certificate of the chemist of the South Carolina College that samples of the same have been tested as required by this Act; and without such certificates any package containing liquors which shall be shipped from place to place within this State, or delivered to the consignee by any railroad, express company or other common carriers, or be found in the possession of any common carrier, shall be regarded as contraband and may be seized without warrant for confiscation, and such common carrier shall be liable to a penalty of $500 for each offense, to be recovered against said common carrier in any Court of competent jurisdiction by summons and complaint, proceedings to be instituted by the Solicitor of any Circuit, with whom evidence may be lodged by any officer or citizen having knowledge or information of the violation; and any person attaching or using such certificate without the authority of the State Board of Control, or any counterfeit certificate for the purpose of securing the transportation of any intoxicating

liquors within this State in violation of law, shall, upon conviction thereof, be punished by a fine of not less than $500 and imprisonment in the Penitentiary for not less than one year for each offense."

Amend by striking out Section 41 of the Act, and change the number of subsequent Sections in the Act, so that Section 42 will become Section 41 and the other Sections be numbered accordingly.

Approved the 5th day of March, A. D. 1897.

BRYAN PTG. CO., COLUMBIA, S. C. 17586

Brief of Argument for Appellee

Supreme Court of the United States.

Filed Nov. 5, 1898.

OCTOBER TERM, 1897.

No. 512.

W. VANCE, W. N. BAHR, J. M. SCOTT, Et al.,
APPELLANTS,

vs.

W. A. VANDERCOOK CO., APPELLEE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA.

BRIEF OF

J. F. H. BETAH,

Counsel for Appellee.

COPY BOUND CLOSE IN CENTER

BRIEF FOR APPELLEE.

Supreme Court of the United States.

OCTOBER TERM, 1897.

No. 514.

S. W. VANCE, W. N. BAHR, J. M. SCOTT, ET AL.,
APPELLANTS,

vs.

W. A. VANDERCOOK CO., APPELLEE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA.

BRIEF OF

J. P. K. BRYAN,

Counsel for Appellee.

COPY BOUND CLOSE IN CENTER

STATEMENT OF THE CASE.

This is a bill in Equity for injunction and relief brought by the W. A. Vandercook Company, of the State of California, against S. W. Vance and others claiming to act as officials and constables under the Act of the General Assembly of the State of South Carolina, generally known as the "State Liquor Dispensary, (folio 2 Record.)

The Complainant is the proprietor of certain well-known vineyards in the State of California known as the vineyards in the "San Gabriel, Santa Clara, Fresno, Sonoma and Napa Valleys," and are producers from grapes of such vineyards of its well-known pure wines and brandies and other liquors, particticularly of clarets, Rhine wine, Burgundies and champagnes.

The bill further alleges that in February and March, 1897, the complainants, in pursuance of certain orders of citizens and residents of Charleston, S. C. shipped from San Francisco, California, 26th March, 1897, by railroad to its agent in the city of Charleston, S. C., one carload of such wines, products of complainant's said vineyards containing seventy-three separate original packages, each marked "W. A. Vandercook, Los Angelos, California," for each of said purchasers and customers, and also marked with specific brand of wine (as by Schedule "A") of the value of twelve hundred dollars. (Fol. 3 Record.)

That these packages were wrongfully seized on arrival at the railroad depot by certain of defendants at Charleston, S. C., and were shipped to defendant, S. W. Vance, at Columbia, S. C., who claimed to act as State Commissioner under said State Liquor Dispensary Law of South Carolina and detained, after repeated demands, said wines and threatened to sell and convert the same. (Fol. 4 Record.)

That the defendant and other officials of the State of South Carolina unlawfully threatened to seize all the wines shipped

COPY BOUND CLOSE IN CENTER

by complainants into the State of South Carolina and deliver same to S. W. Vance, as State Commissioner, who threaten to convert and sell the same, to the iujury of complainants and destruction of their lawful business and inter-state trade and commerce in said wines with the citizens and residents of the State of South Carolina, secured to them by and under the Constitution and laws of the United States. (Fol. 5 Record.)

The complainants since 20 March, 1897, in pursuance of like orders from citizens and residents of the State of South Carolina, shipped from San Francisco, California, to its agent at Charleston, S. C., by railroad, one-half carload of wines, containing nineteen separate original packages of the value of three hundred dollars, all bearing like stamp (Exhibit C.) for its said customers, and same were seized by defendants under like claim on the —— day of April, 1897, on arrival at railroad depot at Charleston, S. C., as previously alleged. (Fol. 6 Record.)

The complainant is now about to ship fifty-eight like packages of its wines on like orders from citizens and residents of South Carolina, to the value of seven hundred dollars, and to ship also continually hereafter to its said customers, residents of the State of South Carolina, in due course of inter-state trade and commerce and supply of their continuous want of and demand for wines and products of your orator's vineyards, large shipments in original separate packages from time to time, exceeding the value of ten thousand dollars ($10,000. (Fol. 6 Record.)

The bill further alleged:

"And your orator further shews, that your orator intends "in the course of its said business, as aforesaid, further and in "addition to said shipments so ordered by its said customers "in advance, as aforesaid, to ship also from San Francisco, "California, to its agent in the State of South Carolina, and to "store and warehouse in the State of South Carolina, and to "sell in the State of South Carolina, in the original unbroken "packages as imported, as aforesaid, to the residents and "citizens of the State of South Carolina, its wines and other

" liquors, products of its vineyards, as aforesaid, for the lawful " use and consumption of the said residents and citizens of the " State of South Carolina in the due and lawful exercise of " your orator's right of importation of such wines, &c., pro- " ducts of its vineyards, into the State of South Carolina in " lawful intercourse, trade and commerce with the citizens and " residents of the State of South Carolina, under the Constitu- " tion and laws of the United States, all of which shipments, as " aforesaid, the defendant and other persons claiming to act as " State constables and officials threaten to seize, take and carry " away, detain, convert and sell to the manifest wrong, damage " and injury of your orator and its trade and business, as " aforesaid."

" And your orator further shows, that by and under the terms, principle. policy and operation of the said dispensary law of the State of South Carolina, as aforesaid, approved March 6, 1896, and amended March 5, 1897, all wines, beers, alcoholic, spirituous and other intoxicating liquors are subjects of lawful manufacture, barter, sale, export and import in the State of South Carolina, and have been, are being, and will continue to be lawfully used and consumed as a beverage by the citizens and residents of the State of South Carolina."

" And your orator further shows, that the wines and other liquors, products of your orator's vineyards, as aforesaid, are lawful subjects of inter-state and foreign trade and commerce."

" And your orator further shows, that the said dispensary law of the State of South Carolina, in so far as it authorizes any of the said acts of the said defendants, or in any way attempts to abridge your orator's right of importation of its said products of its vineyards into the State of South Carolina, and there sell, in original imported packages, the same, or in anywise hinders and prevents its intercourse, commerce and trade with the citizens and residents of the State of South Carolina in the products of its said vineyards, is in conflict with Art. 1, Secs. 8 and 9, of the Constitution of the United States, and is unconstitutional, null and void. (Fol. 6 and 7, Record.)"

COPY BOUND CLOSE IN CENTER

The bill further alleges repeated notices by complainant to defendant of the right and privilege of complainant under the Constitution of the United States and warnings as to their malicious trespasses, but notwithstanding same defendant continues and threatens to continue in said trespasses and seizures and breaking up such lawful interstate trade and intercourse of complainants with citizens and residents of South Carolina. (Fol. 8, Record.)

The bill further alleged accrued damages to extent of five thousand dollars, and threatened destruction of the business and trade of complainants to the damage upwards of five hundred dollars. (Fol. 8, Record.)

The bill also alleged that the protection of complainant involved a multiplicity of suits, the financial irresponsibility of all defendants, and irreparable injury to complainants by the threatened continuous invasion and violation of complainants' constitutional rights, privileges and immunities, and to the continuous unlawful restraint of the said trade, commerce and intercourse of your orator with the citizens and residents of the State of South Carolina, and to the continuous obstruction and destruction of the lawful business of your orator in the sale, as aforesaid, of such wines, &c., products of its vineyards, to the citizens and residents of the State of South Carolina, and the continuous unlawful restraint of the lawful use and consumption by the citizens and residents of the State of South Carolina of the products of the vineyards of your orator in the said State of California.

The bill prayed interlocutory and permanent injunction against said defendants in their unlawful destruction of the Inter-State trade and commerce of complainant in the products of its vineyards as set forth in the bill. (Fol. 11, Record.)

INTERLOCUTORY DECREE.

The defendants answered setting up the South Carolina Dispensary Law as their legal justification. (Fols. 23, 25, 28, 34, Record.)

Upon hearing on bill and answer the U. S. Circuit Court granted the interlocutory injunction and delivered an opinion on the same. (Fol. 45-58, Record.)

EVIDENCE.

The evidence of R. R. Turner on behalf of the complainants is full in sustaining the allegation of the bill as to orders of the citizens and residents of Charleston, S. C., for the wines of complainant's California vineyards, shipments from San Francisco, and seizure of same on arrival at Charleston, S. C., and the notices and repeated warnings to defendants, and their continued trespasses notwithstanding, and damages to complainants. (Fol. 83-91, Record,) and particularly he testified as follows:

"The plaintiff is a corporation created by and under the laws of the State of California and are proprietors and owners of a number of vineyards in the State of California, known as "San Gabriel," "Santa Clara," "Fresna," and "Napa" Valleys, and producers of wines and brandies from the grapes."

And also testified:

"Before, during and after these seizures intoxicating liquors *inter alia*, whiskey, beer, wine and brandy were being manufactured in the State of South Carolina. The distilleries, breweries and vineyards were producing spirituous liquors, wine and beer within the State, and the same was used as a beverage in the State and so sold within the State by State Agents, known as dispensers, at State liquor shops, known as dispensaries, under the provisions of the so-called State liquor dispensary law, (Acts 1896, 1887,) and such liquor products of the State of South Carolina were being exported to other States by its citizens from the State. Same liquors, products of other States, were being imported by the State Board of Control from other States and sold by dispensers in broken packages and unbroken original packages. The imports consisted wholly of such products of other State or States as the Board of Control chose to import. *No Products of the Vandercook vineyards have ever been imported by the Board of Control or at any time offered for sale in State liquor dispensaries in South Carolina,*" (fol. 90, Record.)

COPY BOUND CLOSE IN CENTER

"The United States Government has issued, upon application, licenses for wholesale and retail liquor dealers under the Revised Statutes of the United States, Sec. ——, to the State liquor dispensaries throughout the State of South Carolina, and usual license fees have been paid by the State. (Folio 90, Record.)

The testimony of *W. A. Vandercook, President* of Complainant Company, is also full to the allegations of the Bill, as follows:—(Fol. 91, Record.)

"Since the interlocutory injunction filed in the case on—— day of ———, 1897, the W. A. Vandercook Company have established in the cities of Charleston, Columbia and Greenville and other cities, agencies for storing, warehousing and selling in original unbroken packages, as imported wines, &c., products of their California vineyards. The same have not been at any time sold in any town or city where, by the law of the State of South Carolina, all sale of intoxicating liquors by the State Dispenser or otherwise is prohibited, and the same are sold in original unbroken packages as imported and not sold to minors or drunkards, not sold to be drunk on the premises, or opened on the premises, are sold in the daytime within the legal hours of sale."

"We have been and are willing to have the products of our vineyards inspected by the State of South Carolina under any lawful and reasonable system of inspection. The law of the State denies us inspection and sale of our goods in original packages in the State. There has been no demand upon us by any officer of the State for inspection of our goods sold in our agencies in original packages as imported into the State."

The plaintiff, W. A Vandercook Company, is a corporation created by and under the Laws of the State of California. (Fol. 91, Record.)

This testimony of Complainants is without contradiction.

FINAL DECREE.

The Circuit Court by final decree, made permanent the interlocutory injunction and added these words:—

"It is also further ordered that the complainants, inasmuch as they have since filing of the original bill, established as therein alleged, agencies within the State of South Carolina for warehouseing, storing and selling their wines, &c., products of their California vineyards, in original unbroken packages, as imported, must conform to all lawful police regulations of the State, to-wit: may only sell the same within the legal hours, in the daytime, and not to be opened or drunk on their premises, and not to be sold to minors or drunkards, and not to be sold in cities or places where all sale of intoxicating liquor by State Dispenser or otherwise is prohibited by law of the State, and not to be sold to anyone on Sunday." (Folios 81–82, Record.)

The practical result of the final decree of the U. S. Circuit Court is to allow the sale of the wine products of the California vineyards of the complainants in South Carolina, within the same hours, at the same places in South Carolina, and under the same conditions and regulations as the State of South Carolina, by her dispensers or selling agents, is selling the wine products and beer and spirituous liquors, products of South Carolina, as a beverage to the citizens of South Carolina. The decree of injunction secures equal rights to California wine as a lawful product alongside of the liquor products of South Carolina, remedies the wrong of its continued exclusion from the markets of the State of South Carolina, and gives same opportunity to the citizen of South Carolina to purchase and drink, as a beverage, California wine that he has under the law of South Carolina to purchase and drink South Carolina wine and liquor products.

In short, the decree puts and keeps in the wine market of South Carolina on equal terms and conditions these California wines which by the operation of the laws of South Carolina had been previously excluded from the wine market of South Carolina.

FIRST ASSIGNMENT OF ERROR.

Because the bill of complaint presents no question arising under the Constitution or laws of the United States.

COPY BOUND CLOSE IN CENTER

We submit this question without argument, and refer only to *Donald v. Scott, 165 U. S. 100*, where the Court held that the question whether the law of the State was, in the exercise of the police power, was one in the last instance for this Court.

See also Donald v. Scott, 165 U. S. 107.

SECOND ASSIGNMENT OF ERROR

Because the bill presents no case upon which the jurisdiction of a Court of Equity can be founded, as there are plain and adequate remedies at law for the correction of any of the matters and things alleged in the bill, if the said allegations are true.

We submit this question without argument, the same being concluded by the decision of this Court. *Donald v. Scott, 165, U. S. 107.*

THIRD EXCEPTION OF ERROR.

Because the complainant has not in and by the said bill of complaint made or stated a case to entitle said complainant in a Court of Equity to any relief against them or either of them as to the matters contained in said bill.

We submit this question on the argument on the further assignments of error.

FOURTH ASSIGNMENT OF ERROR,

Because his Honor erred in holding that the provisions of an Act of the General Assembly of the State of South Carolina approved March 6, 1896, and amended March 5, 1897, commonly known as the Dispensary Law, in so far as they forbid citizens of this State or of other States from importing ales, wines and liquors into this State for sale in original, unbroken packages, are not a lawful exercise of the police power of the State and are in contravention of the Constitution of the United States and Inter-State Commerce Acts of Congress.

FIFTH ASSIGNMENT OF ERROR.

Because his Honor erred in holding that the provisions of the said Act prohibiting the importation of liquor into this State for sale is not a valid exercise of the police power of the State and does not come within the provisions of the Act of Congress of 1890, known as the "Wilson Act."

SIXTH ASSIGNMENT OF ERROR.

Because his Honor erred in holding that the provisions of the said Act as amended, providing for the inspection of all liquors brought into the State for use or sale, is not the lawful exercise of the police power of the State and is in contravention of the Constitution of the United States.

SEVENTH ASSIGNMENT OF ERROR.

Because his Honor erred in holding that a non-resident manufacturer or dealer can import wines, ales and liquors into the State of South Carolina and store and sell the same, either by himself or through an agent, the said agent being a citizen ot this State.

These assignments (namely, the fourth, fifth, sixth and seventh,) involve the main question in this case, the constitutionality of the Dispensary Law of the State of South Carolina in prohibiting the importation into the State of South Carolina by complainant of wine products of its California vineyard and sale therein of the same in original unbroken packages, at the same time and places and under the same regulations that the State of South Carolina, by its agents, is selling the wine and liquor products of the State of South Carolina to its citizens for use as a beverage.

We contend as alleged in the Bill, (paragraph IX.)

"And your orator further shews that by and under the terms, principal, policy and operation of the said Dispensary Law of

COPY BOUND CLOSE IN CENTER

the State of South Carolina, as aforesaid, approved March 6th, 1896, and amended March 5th, 1897, all wines, beers, ales, alcoholic, spirituous, and other intoxicating liquors are subjects of lawful manufacture, barter, sale, export, and import in the State of South Carolina, and have been, are being, and will continue to be lawfully used and consumed as a beverage by the citizens and residents of the State of South Carolina."

"And your orator further shows that the wines and other liquors, products of your orator's vineyards, as aforesaid, are lawful subjects of inter-state and foreign trade and commerce."

"And your orator further shews that the said Dispensary Law of the State of South Carolina, in so far as it authorized any of the said acts of the said defendants, or in any way attempts to abridge your orator's right of importation of its said products of its vineyards into the State of South Carolina and there sell, in original imported packages, the same, or in anywise hinders and prevents its intercourse, commerce, and trade with the citizens and residents of the State of South Carolina in the products of its said vineyards, is in conflict with Article I., Section 8 and 9 of the Constitution of the United States, and is unconstitutional, null and void."

We contend that the complainants, citizens of the State of California, have the right to import in original unbroken packages wine products of their California vineyards, and sell the same as imported, in such packages, as long as the State of South Carolina is, through her dispensaries, selling, as she is now selling, for use and consumption to all her citizens, throughout the whole borders of the State, also, beers, wines and spirituous liquors, products of her own vineyards, distilleries and breweries, and of such other States as she chooses to patronize, and as long as the people of the State of South Carolina are actually and lawfully drinking intoxicating liquors as a beverage, That the Dispensary Law, in denying this right to the complainant of Inter-State commerce in the wine products of California vineyards, and excluding California wine from the State markets on equal terms with South Carolina products or products of other States there sold, is against the Constitution

of the United States, and is a regulation and restriction of Inter-State commerce. and is a discrimination against the products and industries of other States, which the State is powerless to make or enforce, having surrendered that power to the United States, by joining with other States in the Constitution of the United States, which delegated to Congress the exclusive power to regulate commerce between the States, and that the principle here at stake preserves the free trade of South Carolina with her sister States as to her own products, which to lose would destroy the benefits of her membership of the commercial union formed under the Constitution. The enforcement of this right, alike the privilege and pledge of each and all of the States, and the very bond of this Union, is the object of this suit.

To understand the scope and effect of the South Carolina Dispensary Law let us examine its main features, bearing on this question :

It prescribes :

"The manufacture, *sale*, barter or exchange receipt or acceptance for unlawful use, delivery, storing and keeping in possession within this State of any spirituous, malt, vinous, fermented, brewed or other liquors which contain alcohol and is used as a beverage *except as hereinafter provided*, is hereby prohibited. * * All alcoholic liquors in this State, whether manufactured within this State or elsewhere, not having been tested by the chemist of South Carolina College, and found to be pure and free from poisonous, hurtful and deleterious matter, matters are hereby declared to be of a detrimental character, and their use and consumption are against the morals, good health and safety of the State and all such liquors may be seized wherever found without warrant, etc."

"Any person resident in this State intending to *import* for *personal use* and consumption any spirituous, malt, vinous, fermented, brewed or other liquor containing alcohol from *any other State* or foreign country, shall first certify to the chemist of the South Carolina College the quantity and kind of liquor proposed to be imported, together with the name and place of

COPY BOUND CLOSE IN CENTER

business of the person, firm or corporation from whom it is desired to purchase, accompanying such certificate with a statement that the proposed consignor has been requested to forward a sample of such liquor to the said chemist at Columbia, South Carolina. Upon receipt of said sample the said chemist shall immediately proceed to test the same, and if found to be pure and free from any poisonous, hurtful or deleterious matters, he shall issue a *certificate* to that effect, stating therein the names of the proposed *consignor* and consignee, and the quantity and kind of liquor proposed to be imported thereunder. which certificate shall be dated and forwarded by said chemist, post paid, to the proposed *consignor* at his place. of business. The said *consignor* shall cause such certificate to be attached to the package containing the liquor when it is shipped in this State, and no package bearing such certificate shall be liable to seizure and confiscation; but any paekage of spirituous, malt, vinous, fermented, brewed. or other liquor or liquid containing alcohol *imported into this State without such certificate*, * * shall be seized and confiscated as provided in this Act. It shall be unlawful to use said certificate for more than one importation. Any person or persons convicted of selling any liquor imported under this Section shall suffer double the punishmeut for sale under * * this Act.

Section 1, Act 1896, as amended Act 1897, Appendix pp. 1 and 29, 30.

"A board, consisting of five members, to be known as the State Board of Control, shall be elected by the General Assembly at this session to carry out the provisions of this Act." (Section 2.)

"The State Board of Control, under such rules and regulations as may be adopted by said board, shall purchase *all liquors for lawful sale* in this State, and shall have the same tested and declared to be *pure*, as hereinbefore and hereinafter provided." (Section 2, Appendix p. 3, 33.)

"State Commissioner shall furnish all intoxicating liquors for *lawful sale* in this State to such persons as may be designated as dispensers thereof, to be sold as hereinafter prescribed

in this Act, shall not furnish to the county dispensers any intoxicating or fermented liquors, except such as have been tested by the chemist of the South Carolina College and declared to be pure, &c." (Section 3.) *Id.* p. 3, 33, Appendix.

"Each county dispenser shall remit to the State Treasurer all moneys accruing to the State from the sale of liquors, and State Board of Control shall draw warrants on the State Treasurer for the amount necessary to pay the expenses in conducting the business." (Section 3.) *Idem*, p. 3, 34, Appendix.

"In all purchases or sales of intoxicating liquors made as contemplated in this Act, the State Board of Control shall cause a *certificate* to be attached to each and every package containing said liquors when the same is shipped to the State Commissioner from the place of purchase, or by State Commissioner to the county dispensaries, certified by their official signatures and seal, which certificate shall state that liquors contained in said packages have been purchased by the State Board of Control for *sale* and use within the State of South Carolina, under the laws of said State, and shall also cause to be attached to all such liquors the certificate of the chemist of the South Carolina College that *samples of the same* have been tested as required by this Act; and *without such certificate any package* containing liquors which shall be shipped from place to place within this State, or delivered to the consignee by any railroad, express company, or other common carriers, or be found in the possession of any common carrier shall be *regarded* as *contraband*, and may *be seized without warrant for confiscation*, and such common carrier shall be liable to a penalty of $500 for each offence," (Section 3.) *Idem*, p. 4, 34, Appendix.

"The State Commissioner shall, before shipping any liquors to dispensers, except beer, cause the same to be put into packages of not less than one-half pint nor more than five gallons." (Section 4.) *Idem*, p. 5, Appendix.

"He shall sell by the package only, and no person shall open the same on the premises." (Section 4.) *Idem*, p. 5, Appendix.

COPY BOUND CLOSE IN CENTER

"Dispensers shall open their place of business, and sell only in the day time." (Section 4.) *Idem.* p. 5, Appendix

"There may be one or more county dispensers appointed for each county, the place of business of each of whom shall be designated by the County Board." (Section 7.) *Idem.* p. 6, Appendix.

"That nothing in this Act contained shall be so construed as to prohibit persons resident in counties which shall elect to have no dispensary from procuring liquors from dispensaries in other counties, or county dispensers from shipping same to their places of residence under paper labels or certificates." (Section 7.) *Idem.* p. 7, Appendix.

"*All profits*, after paying all expenses of the county dispensary, shall be paid, one-half to the County Treasurer and one-half to municipal corporation in which it may be located." (Section 9) *Id.* p. 9, Appendix.

N. B.—By previous Act, 1892, the State makes a profit of not less than 50 per cent. in selling to county dispensers.

"Any person, firm, association or corporation desiring or intending to manufacture or distill any liquors containing alcohol within this State, shall first obtain from the State board of control a permit or license so to do. Every package, barrel or bottle of such liquor shipped beyond the limits of this State shall have thereon the certificate of the State Board of Control allowing same, otherwise it shall be liable to confiscation." (Section 15.) Id. p. 13, Appendix.

"*And provided*, That any person shall have the right to make wine for his or her own use from grapes or other fruits. The inspector appointed by the State Board of Control, as herein provided, shall have the right to enter and examine, at any and all times not forbidden by the United States laws, any distillery, brewery or place where liquor containing alcohol is manufactured within this State." (Section 15.) Id. Managers of hotels may obtain license to dispense liquors *bought* from the *State Dispensary* by the bottle either night or day. Sec. 21. Appendix p. 13, 14.

"No suit shall lie for damages alleged to arise by seizure and detention of liquors under this Act." Section 22, p. 16, Appendix.

"The manager of every registered distillery of liquor in this State shall report quarterly to the State Board of Control, showing the number of gallons of each kind of liquor on hand, manufactured or *disposed* of during the quarter." (Section 23.) Id. p. 19, Appendix.

"That any of the liquors set forth in Section 1 of this Act, which are contraband, may be seized and taken without warrant by any constable, sheriff or policeman while in transit or after arrival, whether in possession of a common carrier, depot agent, express agent, private person, firm, corporation or association, and reported to the State Commissioner at once, who shall dispose of the same as hereinafter provided." (Section 25.) Id. Appendix, p. 20.

"And the State Commissioner shall have the said contraband liquors tested by the State Chemist, and *if pure* shall furnish the same through the State Dispensary. If not pure, the same shall be destroyed by the Chemist of the South Carolina College, who shall make a report to the State Board of Control of the amount and kinds of liquors so destroyed." (Section 31.) Id. p. 22, Appendix.

"That no person, *except as provided in this Act, shall bring into this State*, or transport from place to place within this State by wagon, cart or other vehicle, or by any other means or mode of carriage, any liquor or liquids containing alcohol, under a penalty of $100, or imprisonment for thirty days, for each offense, upon conviction thereof, as for a misdemeanor." (Section 33.) P. 23, Appendix.

"All alcoholic liquors, *other than domestic wine*, which do not have on the packages in which they are contained the label and *certificates* going to show that they have been *tested by the chemist and purchased from a State officer* authorized to sell them, are hereby declared contraband, and on seizure will be forfeited to the State, as provided in Section 31." (Section 35.) P. 24, Appendix.

COPY BOUND CLOSE IN CENTER

"That Chapter I, title VII, of the Code of Civil Procedure of this State, entitled 'Of provisional remedies in civil actions,' shall not apply to any officer or person having duties to perform under this Act, and in no case shall an action lie against any such officer or person for damages to person or property, as provided in said Chapter." (Section 45.) P. 27, Appendix.

From the foregoing provisions of this Dispensary Law of March 6th, 1896, and March 5, 1897, the principles of the Act are identical with the Act of January 2nd, 1895, in the following main features:—

(1.) The State of South Carolina has embarked in the liquor trade, with her own capital and her own officials as employès in "conducting the business;" that intoxicating liquor is with her *an article of commerce*, bought and sold and good for man, and sold by her as a beverage daily, in any quantity, in packages of one-half pint to five gallons.

(2.) That in such trade she has assumed the exclusive monopoly and suffers no competition within her borders either from within or without, and would trade herself with Indian tribes and other States and foreign nations. (*South Carolina vs. Seymour*, 153 U. S., 356.) That she conducts both domestic and Inter-State commerce in liquor.

(3.) That "the profits" of this trade are divided between the State, county and city governments.

(4.) That her attitude by the law to the liquor question is that pure alcoholic liquor is not poisonous or hurtful to the morals, health, welfare of her people, but that "pure intoxicating liquor is good for the health, morals and safety of her citizens, and that she undertakes to provide and sell to them *chemically pure alcoholic* liquor in packages of one-half pint to five gallons for their use and consumption throughout the whole State, and even where a prohibition sentiment elected not to have liquor dispensaries in certain counties citizens there resident are supplied with liquor by the State from other county dispensaries by shipments made to them.

(5.) That she allows all her private liquor manufactories, breweries and distilleries and vineyards to run in full blast as before, both to supply her own needs and ship *without inspection* their products to other States and foreign countries, giving to her liquor industries both the home and foreign markets.

(7.) That she expressly allows any person in the State to make wine for their own use in the State without any inspection whatever, while seizing any wine imported into the State made out of the State for their own use; that she expressly exempts "domestic wine from being contraband" without certificate showing it to have been tested by the chemist and purchased from a State officer.

(9.) While fixing by the Act itself "chemical alcoholic purity" as a mercantile standard and quality of her intoxicating liquor offered by her for sale and use of her citizens, she refuses inspection and sale to wines from California, though equally pure, when imported by complainant for sale; and this, too, while her laws operate to make the liquor supply for use of her own citizens come from her own products and such other as her officials choose to buy to the exclusion of products of other States.

(10.) While thus discriminating in favor of her own products and refusing to such importations inspection and sale according to her own test, the State actually seizes all liquor from another State, and if, upon her own test, it is found "pure," instead of returning it to the producer as having been found to be the merchantable standard and quality fixed as lawful and wholesome by the Act itself, the State persists in confiscating it, and even sells it to her own citizens through the dispensary, thus affirming its intrinsic good quality. The result of all of which is she practically prohibits the introduction and sale of foreign liquors, while favoring the manufacturing of her own liquor products by her citizens and favoring their use and even their development within the State, and their shipment by her own distillers, vintners and brewers to other States and foreign countries.

COPY BOUND CLOSE IN CENTER

(11.) While fostering her own liquor industries and selling liquor to all her citizens and the outside world and foreign nations and Indian tribes, she excludes the liquor products of sister States (by this discrimination) by a drastic system of penal laws and criminal statutes, inflicting heavy penalties against producers having such imported liquor for sale or carriers bringing it into the State, although it may be as "pure" as the local liquor product she herself sells.

(12.) That she has created a State Board of Control to conduct the liquor traffic—to buy and sell all liquors to her citizens—giving such official Board power to import or refuse to import the liquor products of any other State, while she denies all producers in other States the right to import for sale such products of other States—*i. e.*, she has made it a State privilege and monopoly to engage in inter-state commerce, to import or not to import for sale such liquors from other States, and while she is selling to her own citizens the products of her own State, and while her own citizens are manufacturing and shipping to and selling their liquor products to citizens of other States, she seizes and confiscates and denies inspection and sale according to her own test the liquor products of other States imported by producers for sale and consumption of her own citizens.

(13.) From all of which and the inevitable operation of this Act of April, 1896 and 1897, it appears that the only way in which the wine product of complainant can surely be maintained free from discrimination and can surely reach the consumer, and compete with and have equal opportunity with the local wine product sold by the State to its citizens if desired by the consumer, is through the right of the complainant producer to import into the State of South Carolina such wine products of California for sale, subject to the right of inspection according to the test of merchantable quality, and under the regulations fixed by the State, which opportunity of inspection and sale, is now denied by the Act of March 6, 1896, and March 5, 1897.

(14.) That these Acts of 1896 and 1897 although allowing a partial inter-state commerce between the producer of another State and consumer in South Carolina, by importing for personal use—that is, a purchasing of California wine in California by a resident of South Carolina and importing it into South Carolina, for personal use, still while this process of one month or more is going on, and the citizen of South Carolina is waiting for his California wine, and is put to great cost and trouble and increased freight for small packages, there is being sold by South Carolina during all that time each day and hour in her liquor market her own liquor products and certain others she imports, ready at hand and always present for immediate purchase by her citizens, and to deny complainants like inspection and sale and opportunity of sale, under same regulations alongside of and in competition with the liquor the State is selling in the State market is discriminating against the California wine in favor of her own liquor products and those she imports for sale.

(15.) That whereas by the Dispensary Act of 1895, condemned for discriminations by this Court in (*Donald vs. Scott, 165 U.S. pages 75, 79, 92, 93,*) the State Commissioner was commanded to purchase his supplies from the Brewery and distillers of South Carolina if as cheap and if their product reached the standard required by this Act, *i. e.*, "chemically pure," (whatever that may mean) and was further commanded to make special contracts with the grape growers of South Carolina to put the domestic wines on the market at only ten per cent. above actual cost and expenses to "encourage grape growing" in this State, it now appears by Act of 1896 and 1897 (appendix) that the State Board of Control and the State Commissioner have even greater powers; they are now without any limitation of authority whatsoever; they are absolutely supreme; they have power to discriminate even more; they even buy and can put local liquor products on the market, even if they cost more than products of other States; they can make the profit of domestic wine in the South Carolina market even less than ten per cent. They have complete monopoly and can put up even more the price of foreign wines, not only in domestic but also in *inter-state*

COPY BOUND CLOSE IN CENTER

commerce, with power to destroy or build up the wine industry of any other State. They can say, as they have said for seven years, no wine from the vineyards of five valleys:—"Freno, San Gabriel, Santa Clara, Sonoma, and Napa," of California, shall be sold in South Carolina! They can say no wine except South Carolina wine, or except South Carolina and Georgia wine shall be sold in South Carolina.

(16.) By this Act all inspection and sale of their California wine products is denied to complainant as importers for sale in South Carolina. Moreover the inspection required of the "importer for *personal use*" (Sec. 1) and limited to him specifically is void as being unreasonable, as affording no security or protection to consumer; as being by sample, and not of the original package itself; as operating extra territorially on consignor in another State or foreign country; as operating before "arrival" of the goods within the State; as being a discrimination against California wine, the *domestic wine* being exempted from test and certificate of chemist, and as being finally simply a useless device with no practical beneficial result to consumer, but operating only as a burden and hindrance on *interstate* commerce, with a view to keep out of the State all wines except South Carolina wines and such as she chooses to import for sale, and thus maintain a State liquor domestic and interstate monopoly for revenue.

On this statement of the purpose, object and result of the Dispensary Law, we announce two general legal propositions:

(1.) The Dispensary Law is not enacted in the lawful "exercise of the police power of the State" in its denial of inspection and sale of wines of complainants imported in original unbroken packages.

(2.) The Dispensary Law discriminates against the wines of complainant's California vineyards in excluding them by its operation from inspection and sale in original unbroken packages within the State of South Carolina, and is null and void as a State regulation of interstate commerce.

At the outset, let us examine the effect of the Act of Congress knowns as the "Wilson Act," 1890, which the State here sets up in justification of this Dispensary Law. It is in these words:

WILSON ACT, CONGRESS, 1890.

"That all fermented, distilled or intoxicating liquors or liquids transported into any State or Territory, or remaining therein for use, consumption, sale or storage therein, shall, upon arrival in such State or Territory, be subject to the operation and effect of the laws of *such State* or Teritory *enacted in the exercise of its police powers*, to the same extent and in the same manner as though such liquids or liquors had been produced in such State or Territory, and such shall not be exempt therefrom by reason of being introduced therein in original packages or otherwise." 26 U. S. Statutes, 313.

The State Dispensary Act assumes to enact the Wilson bill, but the Dispensary Law substitutes "this law" for the words, "Laws of such State, enacted in the exercise of its police powers."

The words of the State Dispensary Law are:

"Sec. 32. That all fermented, distilled or other liquors or liquids containing alcohol transported into this State or remaining herein for use, sale, consumption, storage or other disposition, shall, upon introduction and arrival in this State, be subjected to the operation and effect *of this law* to the same extent and in the same manner as though such liquors or liquids had been produced in this State." Dispensary Act, Sec. 32, p. 23, Appendix.

The assumption again in this Section is that "*this law*" (the State Dispensary Law) with its gross discriminations against liquor products of other States, its denial of inspection and sale of complainant's wines from California vineyards, is a law enacted in the "exercise of the police power of the State," within the meaning of the Wilson Act. The Wilson Act declares that liquor is subject only to the laws of "such State enacted in

COPY BOUND CLOSE IN CENTER

the exercse of its police powers," not to any law or every law of the State. It was enacted as a shield to allow the State to enforce prohibition (after Leisy vs. Hardin, 135 U. S., 100,) against the privilege of sale theretofore inhering in the original imported package, not as a sword to discriminate against products of sister States, and for the State to engage in a monopoly of the liquor traffic and protection of home products. It is a carefully guarded statute, and limits the State by its terms.

In *In Re Rahrer, 140 U. S. 545*, the Supreme Court, by Chief Justice, speaking for the Court, has clearly stated that the effect of the Wilson Act was to subject imported articles to *police power* of the State before its sale as an imported package, and not to delay its operation until after its sale as an imported package. It only brought the original imported package within its *police power* " at an earlier period of time than would otherwise be the case." Idem 562.

In the language of this Court again : " Congress did not use terms of permission to the State to act, but simply removed an impediment to enforcement of the State laws in respect to imported packages in their original condition, created by the absence of a specific utterance on its part. It imparted *no power to the State not then possessed*, but allowed imported property to fall at once upon arrival within the local jurisdiction." *In Re Rahrer 140 U. S.. 564.*

The Act did not enlarge the scope of the police power or turn over to the State absolute control of the liquor traffic ; it only allowed, upon arrival, the operation of the laws of the State enacted in the " *Exercise of its police power.*" The question whether the given law of the State was a proper and lawful exercise of the police power was carefully left open by Congress to be determined in view of the definitions and limitations of the police power of the State in the previous decisions of this Court, for in the case of *In Re Rahrer* the Court quotes the cases of this Court bearing upon the relation of the police power to the commercial power, and the Court expressly holds that this Act imparted " *no power to the State not then possessed.*"

The questions, therefore, are: (1.) Is this dispensary law a law "enacted in the exercise of the police power" within the meaning of the Act of Congress, and the decisions of this Court as to liquor imported into the State? (2.) Is the wine of complainants' California vineyards put upon the same plane as liquor produced in the State, as required by the Act of Congress, *i. e.*, does the dispensary law operate in discrimination against the wine of California vineyards of complainants?

A State law operating in discrimination, either directly or indirectly, against products of other States, in favor of products of the State enacting the law, or in favor of products of any other State, is null and void as a regulation of inter-state commerce.

To sustain this position, we cite the following authorities. On the general principles this Court has said:

"There is no attempt to discriminate injuriously against the products of other States, or the rights of their citizens. But a law having such operation would, in our opinion, be an infringement of the provisions of the Constitution which relate to these subjects and therefore void." Woodruff vs. Parham, 8 Wall., 140.

"If this can be done in reference to *liquors*, it can be done with reference to *all the products of a sister State*, and in this mode one State can establish a complete system of non-intercourse in her commercial relations with all other States of the Union." Hinson vs. Lott, 8 Wall., 150.

"The tax in the case before us, if it were of the character we suggested, discriminating adversely to the products of all the other States, in favor of those of Alabama, and *involving a principle which might lead to actual commercial non-intercourse*, would, in our opinion, belong to that class of legislation and be forbidden by the clause of the Constitution just mentioned." (8 Wall, 152.)

The burden here in case at bar is greater than a tax; it is exclusion of products of other States, in protection of local products, sold and consumed within the State.

COPY BOUND CLOSE IN CENTER

Again the Court say: "It will not be denied that that portion of commerce with foreign countries and between the States, which consists in the transportation and exchange of commodities, is of national importance, and admits and requires uniformity of regulation. The very object of investing this power in the General Government was to insure this uniformity against discriminating State legislation." Welton vs. Missouri, 91 U. S., 280.

"It is sufficient to hold now that the *commercial power continues until the commodity has ceased to be the subject of discriminating legislation by reason of its foreign character. That power protects it even after it has entered the State from any burden imposed by* reason *of its foreign origin.* The Act of Missouri encroaches upon this power in this respect, and is, therefore, in our judgment, unconstitutional and void." Welton vs. Missouri, 91 U. S., 282.

In 100 U. S. 439, this Court has again fully stated the principle and the reason of it as the basis of our commercial union.

"In view of these and other decisions of this Court it must be regarded as settled that no State can, consistently with the Federal Constitution, impose upon the products of other States, brought therein for sale or use, or upon citizens engaged in the sale therein or the transportation thereto, of the *products of other States* more onerous public burdens or taxes than it imposes upon the *like products* of its own territory."

"If this were not so it is easy to perceive how the power of Congress to regulate commerce with foreign nations and among the several States could be practically annulled, and the equality of commercial privileges secured by the Federal Constitution to the citizens of the seveaal States may be materially abridged and impaired. 'Over whatever other interests of the country,' said Mr. Webster, 'this Government may diffuse its benefits and blessings, it will always be true, as matter of historical fact, that it had its immediate origin in the necessities of commerce, and for its immediate object the relief of those necessities by removing their causes, and by establishing a uniform and steady sys-

tem.' But State legislation such as that indicated in the cases which have been cited, if maintained by this Court, would ultimately bring our commerce to that 'oppressed and degraded state' existing at the adoption of the present Constitution, when the helpless, inadequate confederation was abandoned and a National Government instituted, with full power over the entire subject of commerce, except that wholly internal to the State composing the Union.'' Guy vs. Baltimore, 100 U. S., 439-440,

And again in Guy vs. Baltimore, 100 U. S., 443, this Court say:

"In the exercise of its police powers a State *may exclude from its territory*, or prohibit the sale therein of any articles which, in its judgment, fairly exercised, *are prejudicial to the health or* which would endanger the lives or property of its people. But if the State, *under guise of exerting its police powers*, should make *such exclusion or prohibition applicable solely to articles* of *that kind, that may* be *produced* or *manufactured in other States*, the Courts would find no difficulty in holding such legislation to be in conflict with the Constitution of the United States."

"The power of the national government over commerce with foreign nations and among the several States is broad and comprehensive. It reaches *the interior of every State of the Union so far as it may be necessary* to *protect the products of other States* and countries from discrimination by reason of their foreign origin." Brown vs. Maryland, 12 Wheat., 419. *Guy vs. Baltimore, 100 U. S., 443.*

Again this Court expound the principle as follows:

"It was against legislation of this discriminating kind that the framers of the Constitution intended to guard when they vested in Congress the power to regulate commerce among the several States." Webber vs. Virginia, 103 U. S., 350.

"There would otherwise be no security against conflicting regulations of different States, each discriminating in favor of its own products and citizens and against the products and citizens of other States." County of Mobile vs. Kimball, 102 U. S., 691-697. Webber vs. Virginia, 103 U. S., 351.

COPY BOUND CLOSE IN CENTER

In Robbins vs. Shelby, Tax Dist., 120 U. S., 493, this Court, among other things, fixes the limit of the police power in inspection laws:—" It is also an established principle, as already indicated, that the *only way* in wich commerce between the States can be *legitimately affected* by State laws, is when, *by virtue of its police power*, and its jurisdiction over persons and property within its limits, a State provides for the security of the lives, limbs, health and confort of persons and the protection of property; *the passage of inspection laws to secure the due quality and measure of products and commodities:* the passage of laws *to regulate or restrict the sale of* articles deemed injurious to the health and morals of the community; and no *discriminations* can be made, by any such regulations, adversely to the *persons or property of other States;* and no regulations can be made directly affecting Inter-State commerce. Any taxation or regulation of the latter character would be an unauthorized interference with the power given to Congress over the subject." *Robbins vs. Shelby Tax Dist., 120 U. S., 493-4.* In this case it is settled that inspection laws as part of the police power, is for the purpose " of securing the *due quality* and measure of products and commodities."

" Can the *State Legislation* make it a Tennessee privilege to carry on the business of *importing goods* from *foreign countries?* If not, has it any better right to made it a *State privilege* to carry on Inter-State commerce? It seems to be forgotten, in argument, that the people of this country are *citizens of the United States*, as well as of individual States, and that they have some *rights under the Constitution and Laws* of the former independent of the latter, and free from any interference or restraint from them." (120 U. S., 496.)

And passing again on the scope of inspection laws as a part of the police power, this Court say in 125 U. S. 488, 489.

" It is impossible to justify this statute of Iowa by classifying it as an inspection law. The right of the States to pass inspection laws is expressly recognized in Art. 1, Sec. 10, of the Constitution, in the clause declaring that ' no State shall, without the consent of Congress, lay any imports or duties on

exports, except what may be absolutely necessary for executing its inspection laws. * * * 'And all laws shall be subject to the revision and control of the Congress.' The nature and character of the inspection laws of the State, contemplated by this provision of the Constitution, were very fully exhibited in the case of Turner vs. Maryland, 107 U. S. 38. 'The object of inspection laws,' said Chief Justice Marshall, in Gibbons vs. Ogden, 9 Wheat, 1, 203, 'is to improve the quality of articles produced by the labor of a country to fit them for exportation; or, it may be, for domestic use. They act upon the subject, before it becomes an article of foreign commerce among the States, and they prepare it for that purpose.' They are confined to such particulars as, in the estimation of the Legislature and according to the customs of trade, are deemed necessary to fit *the inspected articles for the market*, by giving to the purchaser public assurance that the article is in that condition, and of *that quality* which *makes it merchantable* and fit for *use or consumption*. They *are not founded on the idea that* the things in respect to *which inspection is required*, are *dangerous or noxious in themselves*. As was said in Turner vs. Maryland, 107 U. S. 38, 55: 'Recognized elements of inspection laws have always been—*quality of the article*, form, capacity, dimensions and weight of package, mode of putting up, and making and branding of various kinds—all these matters being supervised by a *public officer* having authority *to pass or not pass* the article as lawful merchandise, as it did or did not answer the *prescribed requirements*. It has never been regarded as necessary, and it is manifestly not necessary, that all of these elements should co-exist in order to make a valid inspection law. *Quality alone* may be the subject of inspection, without other requirements, or the inspection may be made to extend to all the above matters. It has never been regarded as within the legitimate scope of inspection laws to forbid trade in respect to any known article of commerce irrespective of its condition and quality, merely on account of its intrinsic nature and the injurious consequence of its use or abuse." Bowman vs. Chicago, 125 U. S., 488, 489.

Under this expounding of an *inspection law* under the Constitution of the United States, when once the State has fixed

COPY BOUND CLOSE IN CENTER

the merchantable quality of liquor, as it has done in the Dispensary Law, and made the test simply that it is "*pure alcoholic liquor*" so soon as the liquor was by the public officer found to answer the prescribed requirement (purity) it should be passed as lawful merchandise, But the Dispensary Law denies to the wines of complainants California vineyard inspection and sale in South Carolina, under equal regulations, under which South Carolina is selling in her market her wines and those she chooses to import. But even if found "*pure*," the State Dispensary Law confiscates the imported liquor, to sell again to its own customers.

Again in Bowman vs. Chicago 125 U. S. 490, this Court fixes clearly the limit of the police power.

"And here is the limit between the sovereign power of the State and the Federal power. That is to say, that which does not belong *to commerce* is within the jurisdiction of the *police power* of the State, and that which does belong to *commerce* is within the jurisdiction of *the United States*."

The State of South Carolina, however, in this Dispensary Act monopolizes the trade and *keeps intoxicating liquor in domestic and interstate commerce* and at the same time would usurp the jurisdiction of the United States to regulate that inter-state commerce.

And this Court say further:

"The same process of legislation and reasoning adopted by the State and its Courts could bring within the *police power* any article *of consumption* that a State might wish to exclude, whether it belonged to that which was drunk or to food and clothing."

Bowman vs. Chicago, 125 U. S. 491.

"It may not under the cover of exerting its police powers substantially prohibit or burden either foreign or inter-state commerce. * * * The reach of the Statute was

far beyond its professed object and far into the realm which is within the exclusive jurisdiction of Congress. * * * The *police power* of a State cannot obstruct foreign commerce or inter-state commerce beyond the necessity for its exercise, and under color of it, *objects not within its scope cannot be secured at the expense of the protection afforded by the Federal Constitution.* And as its range sometimes comes very near to the field committed by the Constitution to Congress, it is the duty of the Courts to guard vigilantly against any needless intrusion."

Bowman vs. Chicago, 125 U. S., 491, 492.

"But whatever may be the nature and reach of the police power of the State, it cannot be exercised over a subject confided exclusively to Congress by the Federal Constitution. It cannot invade the domain of the national government. * * * Neither the unlimited powers of a State to tax, nor any of its large police powers can be exercised to such an extent as to work a practical assumption of the powers properly conferred upon Congress by the Constitution." Bowman vs. Chicago, 125 U. S., 492, 493.

"In Brown vs. Houston, 114 U. S., 622, 630, it was declared that the power of Congress over commerce among the States is certainly so far exclusive that *no State* has power to make any law or regulation which will impose any discriminating burden or tax upon the citizens or *products of other States* coming or brought within its jurisdiction." Bowman vs. Chicago, 125 U. S., 495.

As denying the police power as an authority for the Act, the Court said, as if in anticipation of just such legislation as this Dispensary Act of South Carolina:

"If the State of Iowa may prohibit the importation of intoxicating liquors from all other States, it may also include *tobacco* or any other articles, the *use or abuse* of which it may deem deleterious. It may not choose, even, to be governed by considerations growing out of the health, comfort or peace of the community. Its policy may be directed to other ends. It may choose to establish a system directed to the *promotion and benefit*

COPY BOUND CLOSE IN CENTER

of its *own agriculture*, manufactures or arts of any descriptio and prevent the introduction and sale within its limits of an one or all articles that it *may select as coming into competiti with those* it *seeks to protect.* The *police power* of the State woul extend to such cases, as well as to those in which it was sough to legislate in behalf of the health, peace and morals of the pe ple. In view of the commercial anarchy and confusion th would result from the diverse exertions of power by the sever States of the Union, it cannot be supposed that the Constitutio of Congress have intended to limit the freedom of commerci intercourse among the people of the several States." Bowma vs. Chicago, 125 U. S., 494.

The Court puts its finger here on the vital question in th case; we have seen that the Act of South Carolina, 1895, w in certain particulars mandatory in protection of South Caroli wines, beers and liquors; and is still so unless repealed by A 1896 and 1897, which give even greater power to State Co missioner to protect the liquor industries of South Caroli from competition, investing him with unlimited authority, ev to extent of total exclusion of all wine products of other Stat to protect South Carolina wine products.

And again, in 135 U. S., 113, this Court puts the matter ve clearly:

"That ardent spirits, distilled liquors, ale and beer are su jects of exchange, barter and traffic, like any other commodi in which a right of traffic exists, and are so recognized by t usages of the commercial world, the laws of Congress and t decisions of Courts, is not denied."

"What does not belong to commerce is within the jurisd tion of the police powers of the State, but that which does b long to commerce is within the jurisdiction of the Unit States; that to extend the *police power* over subjects of *co merce* would be to make commerce subordinate to that pow and would enable the State to bring within the *police pow* any article of consumption that a State might wish to exclud whether it belonged to that which was drunk or to food a clothing." 135 U. S., 113, 114.

The universality of the principle governing all the States and all their products as commercial commodities is thus declared by this Court :

"The same rule applies to the sugar of Louisiana, the cotton of South Carolina, the *wines of California*, the hops of Washington, the tobacco of Maryland and Connecticut or the products, natural or manufactured, of any State, applies to all commodities in which a right of traffic exists, recognized by the laws of Congress, the decisions of Courts and usages of the commercial world." Lyng v. Mich. 135, U. S., 167.

In reply to the position of appellants that this Act is declared by its title to be an exercise of the police power, and the presumption is that it was enacted in good faith by the State, we have but to refer to the repeated decisions of this Court, among them more particularly *Minnesota v. Barber, 136 U. S.* 319-320, and Brennan v. Titusville, 153 U. S., p. 299 to show that the title of an Act and even the decision of State Supreme Courts does not control this Court in its decision of this question. In the first case the Court said :

"The presumption that this statute was enacted in good faith for the purpose expressed in the title, namely, to protect the health of the people of Minnesota, *cannot control* the final determination of the question whether it is not repugnant to the Constitution of the United States. There may be no purpose on the part of the Legislature to violate the provisions of that instrument, and yet a statute enacted by it, under the forms of law, may, by its necessary operation be destructive of rights granted or secured by the Constitution. In such cases the Courts must sustain the supreme law of the land by declaring the statute unconstitutional and void. This principle of constitutional interpretation has been often announced by this Court. In Henderson, &c. vs. New York, &c., 92 U. S. 259, 268, where a statute of New York was held to be unconstitutional and void as a regulation of such commerce, the Court said that "in whatever language a statute may be framed, its purpose must be determined by its *natural and reasonable effect.* The motives of the legislators, considered as the purpose they

COPY BOUND CLOSE IN CENTER

had in view, will always be presumed to be to accomplish that which follows as the natural and reasonable effect of their enactments." In Mugler vs. Kansas, 123 U. S., 623, 661, the Court, after observing that every possible presumption is to be indulged in favor of the validity of a statute, said that the judiciary must obey the Constitution rather than the law-making department of the government, and must, upon its own responsibility, determine whether, in any particular case, the limits of the Constitution have been passed. It was added:

"If, therefore, a statute, purporting to have been enacted to protect the public health, the public morals or the public safety, has no real or substantial relations to those objects, or is a palpable invasion of rights secured by the fundamental law, it is the duty of the Courts to so adjudge, and thereby give effect to the Constitution. Upon the authority of those cases, and others that could be cited, it is our duty to inquire in respect to the statute before us, not only whether there is a real or substantial relation between its avowed objects and the means devised for attaining those objects, but whether, by its *necessary or natural operation*, it impairs or destroys rights secured by the Constitution of the United States." Minnesota vs. Barber, 136 U. S., 320.

The words of the Court in that case referring to the necessary exclusion of the Act of sound meats of other States, applies with equal force to the necessary exclusion of pure wines of California, products of other States, in case at bar.

"The enactment of a similar statute by each one of the States composing the Union would result in the destruction of commerce among the several States, so far as such commerce is involved in the transportation from one part of the country to another of animal meats designed for human food, and entirely free from disease. A careful examination of the Minnesota Act will place this construction of it beyond question." (136 U. S., 321.)

"As the inspection must take place within the twenty-four hours immediately before the slaughtering, the Act, by its

necessary operation, excludes from the Minnesota market, practically all fresh beef, veal, mutton, lamb or pork—in whatever form, and although entirely sound, healthy, and fit for human food—taken from the animals slaughtered in other States; and directly tends to restrict the slaughtering of animals, whose meat is to be sold in Minnesota for human food, to those engaged in such business in that State." (136 U. S., 322.)

It will not do to say—certainly no judicial tribunal, can, with propriety, assume—that the people of Minnesota, may not, with *due regard* to their health, rely, upon *inspection in other States of animals* there slaughtered for purposes of human food. If the object of the Statute has been to deny altogether to the citizens of other States the privilege of *selling* within the limits of Minnesota, for human food, any fresh beef, veal, mutton, lamb or pork, from animals slaughtered outside that State, *and to compel the people of Minnesota, wishing to buy meats, either to purchase those taken from animals inspected and slaughtered in the State or to incur the cost of purchasing them when desired for their own domestic use at points beyond the State, that object is attained by the Act in question.* Our duty to maintain the Constitution will not permit us to shut our eyes to these obvious and necessary results of the Minnesota Statute. If this legislation does not make such discrimination against the products and business of other States, in favor of the products and business of Minnesota. It would be difficult to enact legislation that would have that result." (Idem 136 U. S., 322, 323.)

In the case at bar, not only is the duly inspected liquor of other States seized as contraband, but complainants, wine product of California vineyards, imported for sale is also denied inspection and sale under the regulations of the State altogether, and is seized and confiscated even if it is of the merchantable standard, *i. e.*, pure alcoholic liquor, fixed by the State as the test of merchantable quality in her own sales of her own products to all her citizens. And the people of South Carolina wishing to buy wine are compelled either to purchase the wine of South Carolina or such as State Commissioner may

CARY ROUND CLOSE IN CENTER

or not import, or incur the cost and trouble and delay of purchasing them, when desired for their own domestic use, at points beyond the State. This object is attained by the Dispensary Law of South Carolina and this is discrimination in lawful products.

And the Court further said:—

"Imposts operating as an absolute exclusion of the goods would be possible, and all the evils of discriminating State legislation, favorable to the interests of one State, and injurious to the interests of other States and countries, which existed previous to the adoption of the Constitution, might follow, and the experience of the last fifteen years shows would follow, from the action of some of the States.'" (136 U. S., 324,) and the Court quote Walling vs. Michigan, 116 U. S., 446, 455.

And this Court there announce the privilege and right of the complainants in the case at bar in these words, as well as the privilege and right of the people of South Carolina:

"The people of Minnesota have as much right to protection against the enactments of that State interfering with the freedom of commerce among the States as have the people of other States. Although this Statute is not avowedly, or in terms, directed against bringing into Minnesota of the products of other States, its necessary effect is to burden or obstruct commerce with other States, as involved in the transportation into that State, for purposes of *sale there*, of all fresh beef, veal, mutton, lamb or pork, however *free from disease* may have been the animals from which it was taken."

Minn. vs. Barber, 136 U. S., 326.

So the citizens of South Carolina, and the complainant here have as much right to protection against the enactments of that State inhibiting the importation for sale under equal regulations of the wines of California or other States, however free from adulteration and however *pure* they may be.

Further expounding the right of the non-resident producer as complainant here to have in an inspection law a test to

which he can reasonably conform this Court say in that case in comment on the case of Patterson vs. Kentucky, 97 U. S., 501:

"The Kentucky Statute prescribed no test of inspection which, in view of the nature of the property, was either unusual or unreasonable, or which by its necessary operation discriminated against any particular oil because of the locality of its production. *If it had prescribed a mode of inspection to which citizens of other States*, having oils designed for illuminating purposes, and which they desired to sell in the Kentucky market, *could not have reasonably conformed it would undoubtedly have been held to be an unauthorized burden upon Inter-State commerce.*" 136 U. S., 328.

And the Court continues:

"But a law providing for the inspection of animals whose meats are designed for human food *cannot be regarded as a rightful exercise of the police powers of the State*, if the inspection prescribed is of such character, or is burdened with such conditions as will prevent altogether the introduction into the State of *sound meats*, the product of animals slaughtered in other States. It is one thing for a State to exclude from its limits cattle, sheep or swine actually diseased, or meats that, by reason of their condition or the condition of the animals from which they are taken, are unfit for human food, and punish all sales of such animals or of such meats within the limits. It is quite a different thing for a State to declare, as does Minnesota by the necessary operation of its statute, that fresh beef, veal, mutton, lamb or pork—articles that are used in every part of this country to support human life—shall not be sold at all for human food within its limits, unless the animal from which such meats are taken is inspected in that State, or, as is practically said, unless the animal is slaughtered in that State." (136 U. S. 328.)

The South Carolina law says unless it is sold by a State Commissioner, who for seven years has never sold the wines from those California vineyards, and denies inspection and sale of them under equal test and equal regulations.

COPY BOUND CLOSE IN CENTER

"One other suggestion by the counsel for the State serves to be examined. It is that so far as this Statute is concerned. *the peopl: of Minnesota can purchase in other States* fresh beef, veal, mutton, lamb or pork, and *bring such meats* into Minnesota for *their personal use*. We do not perceive that this view strengthens the case for the State, for it ignores the right which the people of other States have in commerce between those States and the State of Minnesota. And it ignores the right of the people of Minnesota to bring into that State, for *purposes of sale*, sound and healthy meat, wherever such meat may have come into existence." (136 U. S. 328, 329.)

This is the precise result attained by the Dispensary Law of 1896, as amended 1897, it permits only the importation by the people of South Carolina for *personal use*. It ignores, (as this Court say) the right which people of other States (as complainant here) have in commerce between those States (California,) and the State of South Carolina.

"If the Statute, while permitting the sale of meats from animals slaughtered, inspected and 'certified' in that State, had expressly forbidden the introduction from other States, and their sale in Minnesota, of all fresh meats of every kind, without making any distinction between these that were from animals inspected on the hoof and those that were not inspected, its unconstitutionality could not have been doubted. And yet it is so framed that this precise result is attained as to all sales in Minnesota for human food, of meats from animals slaughtered in other States." (136 U. S. 329.)

"In the opinion of this Court the Statute in question, so far as its provisions require, as a condition of sales in Minnesota of fresh beef, veal, mutton, lamb or pork for human food, that the animals from which such meats are taken shall have been inspected in Minnesota before being slaughtered, is in violation of the Constitution of the United States and void." (136 U. S. 329, 330.)

In the light of these principles, so fully elaborated in this opinion, the denial to complainant of the right of importation

for sale and denial of inspection of such California wines and seizure and confiscation of all such liquors, when the State herself is selling all kinds of liquor to all her citizens, stands out as a bold usurpation of the power to regulate commerce, inhering in the Federal government.

Again this Court affirmed the principle of *Minnesota vs. Barber*, and uncovered the vice of this class of legislation in *Brimmer vs. Rebman*, 138 U. S. 81.

"The recital in the preamble that unwholesome meats were being offered for sale in Virginia cannot conclude the question of the conformity of the Act to the Constitution. 'There may be no purpose,' this Court has said, 'upon the part of the Legislature to violate the provisions of that instrument, and yet a statute enacted by it, under the forms of law, may by its necessary operation, be destructive of rights granted and secured by the Constitution;' in which case, 'the Courts must sustain the supreme law of the land by declaring the statute unconstitutional and void.' Minnesota vs. Barber, 136 U. S., 313, 319, and authorities there cited. Is the statute now before us liable to the objection that, by its necessary operation, it interferes with the enjoyment of rights granted or secured by the Constitution? This question admits of but one answer. The statute is, in effect, a prohibition upon the *sale* in Virginia of beef, veal or mutton, *although entirely wholesome*, if from animals slaughtered one hundred miles or more from the place of sale." Brimmer vs. Rebman, 138 U. S., 81.

"Whether there shall be inspection or not and whether the seller shall compensate the inspector or not, is thus made to depend entirely upon the place where the animals from which the beef, veal or mutton is taken were slaughtered. Undoubtedly a State may establish regulations for the protection of its people against the sale of unwholesome meats, provided such regulations do not conflict with the powers conferred by the Constitution upon Congress or infringe rights granted or secured by that instrument. But it may, not under the *guise of exerting its police powers or of enacting inspection laws*, make discriminations against the products and industries of some of

COPY BOUND CLOSE IN CENTER

the States in favor of the products and industries of some of its own or other States. The owner of the meats here in question, although they were from animals slaughtered in *Illinois, had the right, under the Constitution, to compete in the markets of Virginia upon the terms of equality* with owners of like meats from animals slaughtered in Virginia or elsewhere within one hundred miles from the place of sale. *Any local regulation which in terms or by its necessary operation, denies this in the markets of a State is, when applied to the people and products or industries of other States, a direct burden upon commerce among the States, and, therefore, void.* Welton vs. Missouri, 91 U. S., 175, 181; Railroad Company vs. Husen, 95 U. S., 465; Minnesota vs. Barber, above cited; Brimmer vs. Rebman, 138 U. S., 82.

So complainant here has the right to have inspection and sale of his wine products of his California vineyards in the markets of South Carolina, on equal terms with the wines of South Carolina or any other State now being actually sold there.

"If the object of Virginia had been to obstruct the bringing into that State for use, as human food, of all beef, veal and mutton, *however wholesome*, from animals slaughtered in distant States, that object will be accomplished if the statute before us be enforced." Brimmer vs. Rebman, 138 U. S., 83.

"It is for all practical ends, a statute to prevent the citizens of distant States, having for sale fresh meats (beef, veal or mutton,) from coming into competition upon terms of equality with local dealers in Virginia. As such, its repugnancy to the Constitution is manifest. The case, in principle, is not distinguishable from Minnesota vs. Barber, where an inspection statute of Minnesota relating to fresh beef, veal, mutton, lamb and pork offered for sale in that State, was held to be a regulation of inter-state commerce and void, because by its necessary operation it excluded from the markets of that State practically all such meats, in whatever form, and although *entirely sound* and fit for human food, from animals slaughtered in other States." Brimmer vs. Rebman, 138, U. S., 83.

"We are of opinion that the statutes of Virginia, although enacted to protect its people against the sale of unwholesome

meats, has no real or substantial relation to such an object, but by its necessary operation is a regulation of commerce, beyond the power of the State to establish." Brimmer vs. Rebman, 138 U. S., 84.

So in the case at Bar the "local dealer" is the State with a monopoly of the liquor traffic, and the operation of the State statute is the prevention of all ales, wines, beers and liquors, products of other States, however *pure* they may be, coming in competition with the local products and the State monopoly, though the South Carolina statutes proceeds on the theory that the State must furnish and sell *pure* alcoholic liquor to her citizens and protect them against *impure* liquors, it has, in the language of this case, "no real or substantial relation to "such an object, but by its necessary operation is a regula- "tion of commerce beyond the power of the State to estab- "lish."

And in Walling vs. Michigan, 116 U. S., 459, 460, the Court applied the same principle to *intoxicating liquors*, products of other States, Judge Bradley saying:

"That this must give an immense advantage to the products manufactured in Michigan, and to the manufacturers and dealers of that State, is perfectly manifest."

"It is suggested by the learned Judge who delivered the opinion of the Supreme Court of Michigan in this case that the tax imposed by the Act of 1875 is an exercise by the Legislature of Michigan of the *police power* of the State for the discouragement of the use of *intoxicating liquors*, and the preservation of the health and the morals of the people. This would be perfect justification of the Act if it did not discriminate against the citizens and products of other States in a matter of commerce between the States, and thus usurp one of the prerogatives of the National Legislature. The police power can not be set up to control the inhibitions of the Federal Constitution, or the powers of the United States Government created thereby. New Orleans Gas Co. vs. Louisiana Light Co., 115 U. S., 650, Walling vs. Michigan, 116 U. S., 459, 460.

And in *Brennan vs. Titusville*, 153 U. S., 299, the Court, by *Mr. Justice Brewer*, says:

COPY BOUND CLOSE IN CENTER

"Even if the license in terms had been declared to be exacted as a *police regulation*, that would not conclude this question, for whatever be the reason given to justify, or the power invoked to sustain the Act of the State, if that Act is one which trenches directly upon that which is within the executive jurisdiction of the National Government, it cannot be sustained. In New Orleans Gas Co. vs. Louisiana Light Co., 115 U. S., 650, 661, this Court, by Mr. Justice Harlan, said: 'Definitions of police power must, however, be taken subject to the condition that the State cannot, in its exercise, for any purpose whatever, encroach upon the powers of the General Government, or rights granted or secured by the supreme law of the land.'"

And re-affirming the cases above quoted, the Court say:

"That no definition of the police power, and no urgency for its use can authorize a State to exercise it in regard to a subject matter which has been confided exclusively to the discretion of Congress by the Constitution." "The police power of the State cannot obstruct foreign commerce or Inter-State Commerce beyond the necessity for its exercise; and under color of it, objects not within its scope cannot be secured at the expense of the protection afforded by the Federal Constitution. (95 U. S. 473, 474.")

And the Court distinguished "between that which is mere inspection and the legitimate exercise of the police power, and that which, under guise of inspection is a direct burden upon and obstruction to Inter-State Commerce," Brennen vs. Titusville, 153 U. S. 301.

And in *Plumley v. Mass, 155 U. S. 471* the Court again re-affirms this position and quotes with approval the case of *Walling v. Michigan*, supra, 116 U. S. 459.

And in the still later case of *Emmert v. Missouri, 156 U. S. 296*, the cases are all reviewed, the same principles are fully elaborated and illustrated.

In the light of these principles announced in these decisions of this Court the South Carolina Dispensary Law is null and void as a discriminating law not within the lawful exercise of the police power of the State and not sanctioned by the Wilson Act, August, 1890, in forbidding inspection and Sale of California wines by complainant in original, unbroken packages, as a part of Inter-State Commerce.

The general question is: Is a sale in the State of South Carolina by complainant Wine Company, citizen of California, in original imported packages, of wines, products of their vineyards, imported for sale, lawful as an Act of Inter-State commerce under the Constitution and laws of the United States.

Is the State law forbidding such sale unconstitutional under the commerce clause of the United States Constitution and laws thereunder.

PROPOSITIONS.

(1.) The commerce clause of the United States Constitution gives the right to every citizen of the United States to trade between the States unless forbidden by Congress.

(2.) The right of trade includes, among other things, the right of importing into any State any lawful article of commerce.

(3.) The right of *importation* of any such article embraces by necessary implication as an inherent, inseparable part of the importation the right to sell the same in the package in which it is imported, unless forbidden by Congress. Brown vs. Maryland. 12 Wheaton, 419.

(4.) The Wilson Act of Congress, August, 1890, is the only restraint upon the freedom of trade and sale of original imported packages of imported wines, &c., that Congress has enacted.

COPY BOUND CLOSE IN CENTER

(5.) The Wilson Act restrains the sale of original imported packages, only when the laws of the State make the manufacture, barter and sale of intoxicating liquors unlawful.

Donald vs. Scott, 165 U. S. 100.

(6.) The dispensary law of South Carolina, 1897, as well as 1895, 1896, recognizes as lawful the manufacture, sale and use of intoxicating liquor, and "therefore is not within the scope or operation of the Wilson Act," and so decided by the Supreme Court of the United States, in Donald vs. Scott, 165 U. S., 100. And State dispensary law not being within the scope and operation of the Wilson Act, liquor is in the language of the Court a legitimate subject of foreign and interstate trade and commerce, and has, under the Constitution and laws of the United States, the same measure of protection from Federal Courts as is given to *other articles.*

(7.) In addition also this dispensary law (1897 as well as 1895) is not an Act lawfully enacted in the exercise of the police power of the State, because it operates to deny "equal regulation for inspection and sale of all imported and domestic liquors," and thereby operates to discriminate injuriously against and to exclude and deny inspection and sale in the market of the State to the wines of complainant, products of the State of California.

The following principles were decided in *Gibbons vs. Ogden, 9 Wheaton 1.* The power to regulate commerce is general and has no limitations but such as are prescribed in the Constitution itself. Page 196.

The power to regulate commerce, so far as it extends, is exclusively vested in Congress, and *no part of it can be exercised by a State.* Page 198. The origin of vesting in Congress the power to regulate commerce is thus stated in Gibbons vs. Ogden, p. 224.

"For a century the States had submitted with murmurs, to the commercial restrictions imposed by the parent State; and now, finding themselves in the unlimited possession of those powers over their own commerce, which they had so long been

deprived of, and so earnestly coveted, that *selfish principle* which, *well controlled*, is so *salutary*, and which, *unrestricted*, is so *unjust and tyrannical*, guided by *inexperience* and jealousy, began to show itself in iniquitous laws and impolitic measures, from which grew up a conflict of commercial regulations, destructive to the harmony of the States, and fatal to their commercial interests abroad."

"This was the immediate cause that led to the forming of a convention."

"Power to regulate commerce extends to every species of commercial intercourse between the United States and foreign nations and among the several States. It does not stop at the external boundary of the State." Pages 193, 195.

"Commerce in its simplest signification means an exchange of goods." Page 229.

In the case of *Brown vs. State of Maryland*, 12 Wheaton, 419, the scope and effect of importation as a part of Inter-State commerce was finally decided in that case. The State of Maryland attempted to enforce a license tax against the importer of original packages and sale without license. The Court held, pages 445, 446, 447, 448, 449:—

1. That the Act was repugnant to the article of the Constitution that no State shall allay any impost on duties on imports or exports.

2. Is it also repugnant to that clause in the Constitution which empowers "Congress to regulate commerce with foreign nations, and among the several States, and with the Indian Tribes?"

"The oppressed and degraded state of commerce previous "to the adoption of the Constitution can scarcely be forgotten. "It was regulated by foreign nations with a single view to "their own interests; and our disunited efforts to counteract "their restrictions were rendered impotent by want of com-"bination. Congress, indeed, possessed the power of making

COPY BOUND CLOSE IN CENTER

"treaties; but the inability of the Federal Government to "enforce them had become so apparent as to render that "power in a great degree useless.

"Those who felt the injury arising from this state of things, "and those who were capable of estimating the influence of "commerce on the prosperity of nations, perceived the neces- "sity of giving the *control* over this important subject to a "*single government*. It may be doubted whether any of the "evils proceeding from the feebleness of the Federal Govern- "ment, contributed more to that great revolution which in- "troduced the present system, than the deep and general "conviction, that commerce ought to be regulated by Con- "gress. It is not, therefore, matter of surprise, that the grant "should be as extensive as the mischief, and should compre- "hend all foreign commerce, and *all commerce* among the "States. To construe the power so as to impair its efficacy, "would tend to defeat an object, in the attainment of which "the American public took and justly took, that strong "interest which arose from a full conviction of its necessity."

"What, then, is the *just extent* of a power to regulate com- "merce with foreign nations, and among the several States?

"This question was considered in the case of Gibbons vs. "Ogden, (9 Wheat., Rept. 1.) in which it was declared to be "complete in itself, and to acknowledge no limitations other "than are prescribed by the Constitution. The power is co- "extensive with the subject on which it acts, and cannot be "stopped at the external boundary of the State, but must "enter its interior."

"We deem it unnecessary now to reason in support of these "propositions. Their truth is proved by facts continually "before our eyes, and was, we think, demonstated, if they "could require demonstration, in the case already mentioned."

"If this power reaches the interior of the State, and may be "there exercised, it must be capable of authorizing the *sale* "of those articles which it introduces. Commerce is *inter-*

"*course*; one of its most *ordinary ingredients is traffic*. It is "inconceivable, that the power to authorize this traffic, which "is given in the most comprehensive terms, with the intent "that its efficacy should be complete, should *cease* at the point "when its continuance is indispensable to its value. To what "purpose should the power to allow importation be given, "unaccompanied with the power to authorize *a sale* of the "*thing imported?* *Sale* is the object of importation, and is an "*essential ingredient* of that intercourse, of which importation "constitutes *a part*. It is *as essential* an ingredient, as indis-"pensable to the existence of the entire thing, then, "*as importation itself*. It must be considered as a "*component part* of the power to regulate commerce. Con-"gress has a right, not only to authorize importation, but to "authorize the importer to sell."

"If this be admitted, and we think it cannot be denied, what can be the meaning of an Act of Congress which authorizes importation, and offers the privilege for sale at a fixed price to every person who chooses to become a purchaser? How is it to be construed, if an intent to deal honestly and fairly, an intent as wise as it is moral, is to enter into the construction? What can be the use of the contract, what does the importer purchase, if he does not purchase the privilege to *sell?*"

"What would be the language of a foreign government which should be informed that its merchants after importing according to law, were forbidden to *sell* the merchandise imported? What answer would the United States give to the complaints and just reproaches to which such an extraordinary circumstance would expose them? No apology could be received, or even offered. Such a state of things would break up *commerce*. It will not meet this argument, to say, that this state of things will never be produced; and that the good sense of the State is a sufficient security against it. The Constitution has not confided this subject to that good sense. It is placed elsewhere. The question is, where does the power reside? not, how far will it be probably abused? The power claimed by the State is, in its nature, in conflict with that given to Congress; and the greater or less extent in which it may be exercised does not enter into the inquiry concerning its existence."

COPY BOUND CLOSE IN CENTER

"We think, then, that if the power to authorize *a sale* exists in Congress, the conclusion that the right *to sell* is connected with the law permitting *importation*, as an *inseparable incident* is inevitable."

"If the principles we have stated be correct, the result to which they conduct us cannot be mistaken. Any penalty inflicted on the importer for *selling* the article in his character of *importer*, must be in opposition to the Act of Congress which authorizes *importation*. Any charge on the introduction and incorporation of the article into and with the mass of property in the country, must be hostile to the power given to Congress to regulate *commerce*, since an *essential part* of that regulation and *principal object* of it, is to prescribe the regular means for accomplishing that introduction and incorporation." p. 448.

"It may be proper to add, that we suppose the principles laid down in this case, to apply to importations from a *sister State*." p. 449.

It was pointed out also in this case at page 442 that the United States in authorizing importation and exacting a duty on foreign imports authorized a sale of the imported packages. "The object of importation is *sale*."

"It constitutes the motive for paying the duties," 442. In the case at bar, the Wilson Act not applying, the right of importation from France of its wines for which the United States exacts duties, includes under Brown v. Maryland the right of *sale* in imported packages, and exists under direct sanction of the Federal Government, in authorizing importation.

"The regulation of *commerce* applies to the *subjects* of *commerce* and not to matters of internal police. Contracts to buy, SELL, or *exchange goods* to be transported among the several States, the transportation and its instrumentalities, and *articles bought, sold, or exchanged*, for the purpose of such transit among the States, or put in the way of transit, may be regulated, but this is because they '*form part of interstate* trade or *commerce*.'"

United States vs. E. C. Knight Co., 156 U. S., 13.

We call particular attention of the Court that under this language of the Court, all of these things form a "*part* of interstate trade or commerce."

And in Leisy vs. Hardin, 135 U. S., 100, 118, the Supreme Court overruled the case of *Pierce vs. New Hampshire, 5 Howard, 504*, in which it was held unlawful to sell a barrel of gin imported from Boston to Portsmouth, and sell in Portsmouth in original package, (page 115); and asserted to its fullest the doctrine of Brown vs. Maryland, and spoke as follows, 110, 111, 112:

"In Brown vs. Maryland (*supra*) the Act of the State Legislature drawn in question was held invalid, as repugnant to the prohibition of the Constitution upon the States to lay any impost or duty upon imports or exports, and to the clause granting the *power to regulate commerce;* and it was laid down by the great magistrate who presided over this Court for more than a third of a century, that the point of time when the prohibition ceases, and the power of the State to tax commences, is not the instant when the article enters the country, but *when the importer has so acted upon it that it has become incorporated and mixed up with the mass of property in the country, which happens when the original package is no longer such in his hands;* that as to the power to regulate commerce, none of the evils which proceeded from the feebleness of the Federal Government contributed more to the great revolution which introduced the present system, than the deep and general conviction that commerce ought to be regulated by Congress; that the grant should be as extensive as the mischief, and should comprehend all foreign commerce and all commerce among the States that that power was *complete in itself*, acknowledged *no limitations* other than those prescribed by the Constitution, was co-extensive with the subject on which it acts and not to be stopped at the external boundary of a State, but must be capable of entering its interior; that the *right to sell* any article imported was an *inseparable incident* to the right to import it; and that the principles expounded in the case applied equally to *importation from a sister State*. Manifestly this must be so, for the same public policy applied to commerce among the States as to foreign commerce, and not a reason

COPY BOUND CLOSE IN CENTER

could be assigned for confiding the power over the one which did not conduce to establish the propriety of confiding the power over the other. Story, Constitution. Sec. 1066. And although the precise question before us was not ruled in Gibbons v. Ogden and Brown v. Maryland, yet we think it was virtually involved and answered, and that this is demonstrated, among other cases, in *Bowman v. Chicago & Northwestern Railway Co.*, *125 U. S. 465*. In the latter case, Section 1553 of the Code of the State of Iowa as amended by c. 143 of the Acts of the twentieth General Assembly in 1886, forbidding common carriers to bring intoxicating liquors into the State from any other State or Territory, without first being furnished with a *certificate* as prescribed, was declared invalid, because essentially a regulation of commerce among the States, and not sanctioned by the authority, expressed or implied of Congress. The opinion of the Court, delivered by Mr. Justice Matthews, the concurring opinion of Mr. Justice Field, and the dissenting opinion by Mr. Justice Harlan, on behalf of Mr. Justice Waite, Mr. Justice Gray and himself, discussed the question involved in all its phases; and while the determination of whether the right of transportation of an *article of commerce* from one State to another includes by *necessary implication* the *right of the consignee to sell it in unbroken packages* at the place where the transportation terminates was in terms reserved, yet the argument of the majority conducts irresistibly to *that conclusion* and we think we cannot do better than repeat the grounds upon which the decision was made to rest. It is there shown that the transportation of freight or the "*subjects of commerce*," *for the purpose of exchange or* SALE, is beyond all questions a *constituent of commerce itself*; That this was the *prominent idea* in the minds of the framers of the Constitution when to congress was committed the power to regulate commerce among the several States; that the power to prevent embarrassing restrictions by any State was the end desired: that the power was given by the same words and in the same clause by which was conferred power to regulate commerce with foreign nations; and that it would be *absurd* to suppose that the transmission of the *subject of trade* from the State of the buyer, or *from the place of production to the market*, was not contemplated, for without that there could be no *consummate*

trade, either with foreign nations or among the States." 135 U. S. p. 110, 111. 112.

In Leisy vs. Hardin, 135 U. S., 124, "the plaintiffs in error are citizens of Illinois, are not pharmacists, and have no permit, but import into Iowa beer, which they sell in original packages, as described. Under our decision in Bowman vs. Chicago, &c., Railroad Co., *supra*, they had the right to import this beer into that State, and in the view which we have expressed they had the right *to sell it*, by which *Act alone it would become mingled in the common mass of property within the State*. Up to that point of time we hold that in the absence of Congressional permission to do so, the State had no power to interfere by seizure, or any other action, in prohibition of importation and *sale* by the foreign or non-resident importer."

"We cannot hold that any articles which Congress recognizes as *subjects of Inter-State commerce* are not such." P. 125. Idem.

"To concede to a State the power to exclude, directly or indirectly, articles so situated, without Congressional permission, is to concede to a majority of the people of a State represented in the State Legislature, the power to regulate commercial intercourse between the States by determining what shall be its *subjects*, when that power was distinctly granted to be exercised by the people of the United States, represented in Congress, and its possession by the latter was considered essential to that more perfect Union which the Constitution was adopted to create." P. 125-135 U. S.

We call the Court's attention to the technical words "*subjects of Inter-State commerce*," and their fixed meaning by this case, as being articles that can be imported and sold as imported articles in original packages.

"In *Donald vs. Scott*, 165, U. S., 91, 93, 100, the Supreme Court *twice* use this phrase, that has a *fixed meaning* in the Courts.

Again, in Lyng *vs. Michigan*, *135 U. S., 166-67*.

"That the *right of importation* of ardent spirits, distilled liquors, ale and beer from one State into another, includes, by

COPY BOUND CLOSE IN CENTER

necessary implication, the *right of sale in the original packages*, at the place where the importation terminates, and that the power cannot be conceded to a State to exclude, directly or indirectly, the *subjects of inter-state commerce*, or by the imposition of burdens thereon, to regulate such commerce, without Congressional permission. The same rule that applies to the sugar of Louisiana, the *cotton of South Carolina*, the *wines of California*, the hops of Washington, the *tobacco of Maryland and Connecticut*, or the products, natural or manufactured, of any State, applies to *all commodities* in *which a right of traffic exists*, recognized by the laws of Congress, the decisions of Courts and the usages of the commercial world. It devolves *on Congress* to indicate such exceptions as in its judgment a wise discretion may demand under particular circumstances."

We call attention of the Court to the lanaguage again:

"The subject of inter-state commerce," all commodities in which a right of traffic exists, have a *right of sale* in original packages."

This is the *inter state commerce* shop—or market.

The only question is: "Is it a subject of inter-state commerce?"

After the passage of the Wilson Bill the first case that had the attention of the Supreme Court was that of *in re Rahrer*, 140 *U. S.*, *545*. That was a case of the sale of liquor in original packages in State of Kansas by the agent of dealers in the State of Missouri.

The Constitution of Kansas provided that "the manufacture and sale of intoxicating liquors should be forever prohibited in this State, etc.," 548. The Court held:

"The Act of August 8, 1890, 26 Stat., 313, c. 728, Wilson Act is a valid and constitutional exercise of the legislative power conferred upon Congress, and, after that Act took effect, such liquors or liquids, introduced into a State or Territory from another State, whether in original packages or otherwise, be

ame subject to the operation of such of its then existing laws s had been *properly enacted* in the exercise of its *police* powers, mong which was the *statute in question* as applied to the peti-ioner's offence." Page 545-6. Rubric 140 U. S.

The Court further said :

"The power of Congress to regulate commerce among the several States, when the subjects of that power are national in heir nature, is also exclusive. The Constitution does not pro-vide that inter-state commerce shall be free, but, by the grant of his exclusive power to regulate it, it was left *free*, except as Congress might impose restraint. Therefore it has been deter-mined that the failure of Congress to exercise this exclusive power in any case is an expression of its will that the subject shall be free from restrictions or impositionss upon it by the several States." Page 555. 140 U. S.

"Commerce, undoubtedly, is traffic," said Chief Justice Mar-shall, but it is something more; it is intercourse. It describes the commercial intercourse between nations and parts of na-tions in all its branches, and is regulated by prescribing rules for carrying on that intercourse." Unquestionably, fermented, distilled or other intoxicating liquors or liquids are *subjects of commercial intercourse*, exchange, barter, traffic, between na-tion and nation, and between State and State, *like any other commodity in which a right of traffic exists*, and are so recog-nized by the usages of the commercial world, the laws of Con-gress and the decisions of Courts." Page 556.

In Re Rahrer, 140, U. S.

"That is to say, that which *does not belong to commerce*, is within the jurisdiction of the *police power* of the State; and that which *does belong to commerce* is within the jurisdiction of the *United States*. And to this limit must all the general views come, as I suppose, that were suggested in the reasoning of this Court in the cases of Gibbons vs. Ogden; Brown vs. the State of Maryland and New York vs. Miln. What, then, is the assumption of the State Court? Undoubtedly, in effect, that the State had the power to declare what should be an article *of lawful commerce in the particular State;* and, having

COPY BOUND CLOSE IN CENTER

declared that ardent spirits and wines are deleterious to the morals and health, they ceased to be *commercial commodities there*, and that *then* the *police power* attached, and consequently the powers of Congress could not interfere. The exclusive State power is made to rest, not on fact of the State or condition of the article, nor that it is property usually passing by sale from hand to hand, but on the declaration found in the *State laws*, and asserted as the *State policy*. that it shall be EXCLUDED FROM COMMERCE.." Page 558, In Re Rahrer, 140 U. S.

" The laws of Iowa under consideration in Bowman vs. Railway Company, 125 U. S., 465, and Leisy vs. Hardin, 135 U. S., 100, were enacted in the *police power* of the State, and not at all as regulations of commerce with foreign nations and among the States, but as they inhibited the receipt of an imported commodity, or its disposition before it had *ceased to become an article of trade* between one State and another, or another country and this, they amounted in effect to a regulation of such commerce. Hence, it was held that inasmuch as *inter-state commerce*, consisting in the *transportation, purchase, sale and exchange of commodities*, is national in its character and must be governed by a uniform system, so long as Congress did not pass any law to regulate it specifically, or in such way as to allow the laws of the State to operate upon it, Congress thereby indicated its will that such *commerce should be free and untrammelled*, and therefore that the laws of Iowa, referred to were inoperative, in so far as they amounted to regulations of foreign or inter-state commerce, in inhibiting the reception of such articles within the State, or *their sale upon arrival*, in the form in which they were imported there from a foreign country or another State. It followed as a corollary, " that when Congress acted at all, the result of its action must be to operate as a restraint upon that *perfect freedom* which its silense insured."

In Re Rahrer, 140, U. S. Pages 559, 560.

" Congress did not use terms of permission to the State to act, but simply removed an impediment to the enforcement of the State laws, in respect to imported packages in their original condition, created by the absence of a specific utter-

ance on its part. It *imparted no power to the State not then possessed*, but allowed imported property to fall at once upon arrival within the local jurisdiction." Page 564. *In Re* Rahrer, 140 U. S., 564.

The question, therefore, of the relation of the Dispensary Law of South Carolina to the Wilson Act, August 1890, is the vital question.

In the Supreme Court of the United States, decided in Re Rahrer, 140 U. S, 545, that the Wilson Act did apply to the State law which forbade the manufacture, sale and use of intoxicating liquor, and held that by the State Act intoxicating liquor was *taken out of commerce* and put under the police power.

The question remained whether the Dispensary Law of South Carolina, which did not take intoxicating liquor out of commerce, either domestic or inter-state, but under which its manufacture, sale and use as a beverage was lawful, could be construed to be within the scope of the Wilson Act. In other words, was the Dispensary Law "a law enacted in the lawful exercise of the police power of the State, within the meaning of the Wilson Act?" This question the Supreme Court has answered in the negative, and fully and clearly set forth the broad principle which governs every case in which the question can be asked. It also gives fully the reasons for the principle clearly and elaborately, based on its former decisions above quoted, It also furnishes, in clear terms, a chart for future guidance, and announces the duty of the Federal Courts on this question. It not only declares that the South Carolina Dispensary Law is not within the scope of the Wilson Act, but declares what law would be within its scope. See *Scott vs. Donald*, 165 U. S., 58; and especially see the following passages in that opinion.

"So long, however, as State legislation continues to recognize wines, beer and spirituous liquors as *articles* of lawful consumption and *commerce*, so long must continue the duty of the Federal Courts to afford to such use and *commerce* the *same measure* of protection, under the Constitution and laws of the United States, as is given to *other articles*." P. 91, 165 U. S., Donald vs. Scott.

COPY BOUND CLOSE IN CENTER

"It is important to observe that the statute before us does not purport to prohibit either the importation, the manufacture, the sale or the use of intoxicating liquors." P. 91, 92, 165, U. S., Donald vs. Scott.

"When those subsequent provisions are examined, we find that, so far from the importation, manufacture and sale of such liquors being prohibited, those operations are turned over to *State functionaries*, by whom alone, or under whose direction, they are so be carried on." P. 92, 165 U. S., Donald vs. Scott.

"In view of these and similar provisions, it is indisputable that whatever else may be said of this Act, it was not intended to prohibit the manufacture, *sale* and use of intoxicating liquors On the contrary, liquors and wines are recognized as commodities which may be lawfully made, bought and *sold* and *must* therefore be deemed to be the *subject* of foreign and *inter-state commerce*." Donald vs. Scott, 165 U. S., 93.

"And here is the limit between the sovereign power of the State and the Federal power. That is to say, that which does not *belong to commerce* is within the jurisdiction of the *police power* of the State and that which does *belong to commerce* is within the jurisdiction of the United States. * * * * The same process of legislation and reasoning adopted by the State, and its Courts would bring within the *police power* any article of consumption that a State might wish to exclude, whether to that which was drank or to feed and clothing." Donald vs. Scott, p. 95. 165 U. S.

"In Leisy vs. Hardin, 135 U. S., 100, it was recognized that ardent spirits, distilled liquors, ale and beer are subjects of exchange, barter and traffic like any other commodity in which a right of traffic exits, and that being thus *articles of commerce* a State cannot, in the absence of legislation on the part of Congress, prohibit their importation from abroad or from a sister State, nor when imported prohibit *their sale* by the importer, and, accordingly, it was held that a statute of the State of Iowa, prohibiting the sale of any intoxicating liquors, except for

pharmaceutical, medicinal, chemical or sacramental purposes, and under a license from a county Court of the State, was as applied to a *sale by the importer*, and in the original packages or kegs, unbroken and unopened, of such liquors manufactured and brought from another State, unconstitutional and void as repugnant to the clause of the Constitution granting to Congress the power to regulate *commerce* with foreign nations and among the several States." P. 96. 165 U. S. Donald v. Scott.

"In Minnesota vs. Barber, 136 U. S. 313, 326, 328, the facts so closely resemble those shown by the record now under consideration, and the principles stated in the opinion are so applicable that we shall state them with some particularity." P. 95, 96. 165 U. S. Donald v. Scott.

"This Court, in an opinion delivered by Mr. Justice Harlan while conceding that the statute was enacted in good faith, for the purpose expressed in the title, namely, to protect the health of the people of Minnesota, held that, as the *necessary effect* of the Act was to deny altogether to the *citizens of other States* the privilege *of* SELLING, within the limits of Minnesota, for human food, any fresh beef, mutton, veal or pork, from animals slaughtered outside of the State, and to compel the *people of Minnesota*, wishing to buy such meats, either to purchase those taken from animals inspected and slaughtered in the State, or *to incur the cost of purchasing them, when desired for their own* DOMESTIC USE, at *points beyond the State* such legislation was void as constituting a discrimination against the *products and business of other States* in favor of the products and business of Minnesota, and as depriving the people of Minnesota the right to bring into that State, for the purposes of SALE AND USE, sound and healthy meat, wherever such meat may have come into existence, It was said: P. 97. 165 U. S. * * * * "It is, however, *contended*, in behalf of the State, that there is in fact no *interference* by this Statute, with the bringing of cattle, sheep and swine into Minnesota from other States, nor any discrimination against the products and business of other States, for the reason—*such is the argument*—that the

COPY BOUND CLOSE IN CENTER

Statute requiring an inspection of animals on the hoof, as a condition of the privilege of selling, or offering for sale, in the State, the meats taken from them, is applicable alike to *all owners of such animals, whether citizens of Minnesota or citizens of other States.* To this we answer *that a Statute may, upon its face, apply equally to the people of all the States, and yet be a regulation of Inter-State commerce which a State may not establish. A burden imposed by a State upon Inter-State commerce is not to be sustained simply because the Statute imposing it applies alike to the people of all the States, including the people of the State enacting such Statute.* Robbins vs. Shelby Taxing District, 120 U. S., 489, 497; case of the State Freight Taxing District, 15 Wall., 232. The people of Minnesota have as much right to protection against the enactments of that State, interfering with the freedom of *commerce among* the States, as have the *people of other States.* Although this Statute is not avowedly, or in *terms*, directed against the bringing into Minnesota of the products of other States, its *necessary effects* is to burden or affect commerce with other States, as involved in the transportation into that State, for the *purposes of sale there*, of all fresh beef, veal, mutton, lamb or pork, however free from disease may have been the animals from which it was taken."

Donald vs. Scott, 165 U. S. 98.

"The same reasoning prevailed in Brimmer vs. Rebman, *138 U. S., 78.* See particularly p. 82, 83. * *

"After the decision in Leisy vs. Hardin, and perhaps, in pursuance of some observations contained therein, Congress passed the Act of August 8, 1890, 26 Stat., 313, c. 728, enacting " that all fermented, distilled or other intoxicating liquors, or liquids, transported into any State or Territory, or remaining therein for USE, CONSUMPTION, SALE or storage therein, shall upon arrival in such State or Territory be subject to the operation and effect of the laws of such State or Territory enacted in the exercise of its *police powers* to the same extent and in the same manner as though such liquids or liquors had been produced in such State or Territory, and shall not be exempt therefrom by reason of being introduced therein in *original packages* or otherwise," This law was approved as

valid, in the case of In Re Rahrer, 140 U. S., 545, and a provision of the Constitution of Kansas, which provided that the *manufacture* and *sale* of intoxicating liquors shall be forever *prohibited* in that State, except for medicinal, scientific and mechanical purposes, and an Act passed in enforcement thereof, making penal the manufacture, sale or barter of any spirituous, malt, vinous, fermented or other intoxicating liquors were *held to be efficacious*, and that imported liquors or liquids shall, upon arrival in a State, fall within the category of domestic articles of a similar nature." P. 99, 165 U. S., Donald vs. Scott.

But of this South Carolina Dispensary Law the Supreme Court say (Donald vs. Scott, 165 U. S., p. 100:) "It is not a law purporting to forbid the importation *manufacture*, *sale* and *use* of intoxicating liquors, as articles detrimental to the welfare of the State and to the health of the inhabitants, and HENCE it is *not* within the *scope and operation of the Act of Congress of August, 1890.* That law was not intended to confer upon any State the power to discriminate injuriously against the products of other States in articles whose *manufacture* and *use* are not forbidden, and which are *therefore* the *subjects of legitimate commerce.* When that law provided that "all fermented, distilled "or intoxicating liquors transported into any State or Terri- "tory, remaining therein for *use, consumption, sale* or storage "therein, should, upon arrival in such State or Territory, be "subject to the operation and effect of the laws of such State "or Territory enacted in the exercise of its *police powers*, to the "*same extent* and in the same manner as though such liquids "or liquors had been produced in such State or Territory, and "should not be exempt therefrom by reason of being intro- "duced therein in original packages or otherwise," evidently *equality or uniformity* of treatment under State laws was intended. The question whether a given State law is a *lawful exercise* of the police power is still open, and must remain open, to this Court."

"1. Such a law may forbid entirely the *manufacture* and *sale* of intoxicating liquors and be valid."

"2. Or it may provide equal regulations for the *inspection* and SALE of *all* domestic and *imported* liquors and be valid. But

COPY BOUND CLOSE IN CENTER

the State cannot, under the Congressional legislation referred to, establish a system which, in effect, discriminates between *Inter-State* and *domestic* commerce in commodities to make and use which are admitted to be lawful." p. 100. 165 U. S. Donald v. Scott.

"It is sufficient for the present cases to hold, as we do, that when a State recognizes the *manufacture, sale* and *use* of intoxicating liquors as lawful, it cannot discriminate against the bringing of such articles in, and *importing them* from other States; that such legislation is void as a hindrance to *Inter-State commerce* and an *unjust preference* of the products of the *enacting State* as against similar products of the other States."

Donald v. Scott, 165 U. S., 101.

And it is well to remember just here, and all through this case, what the Supreme Court of the United States has said as to power to prevent the bringing in and importing of an article, and the power of *selling* that article. The principle is fixed. Chief Justice Marshall for Court, said:

"There is no difference in effect between a power to prohibit the *sale* of an article and a power to prohibit its introduction into the country."

Brown v. Maryland. 12 Wheaton, 439.

The State Dispensary law is powerless to prevent the importation, it must be powerless to prevent the *sale* of the imported original package as such.

The clear utterances of the Supreme Court establish two propositions, on each of which independently we rest this case:

I. THE DISPENSARY LAW, 1896 AND 1897, OF SOUTH CAROLINA, BECAUSE NOT PURPORTING TO PROHIBIT THE MANUFACTURE, SALE AND USE OF INTOXICATING LIQUORS AS A BEVERAGE, IS FOR THIS REASON, NOT WITHIN THE SCOPE AND OPERATION OF THE WILSON ACT, AND THAT IMPORTED LIQUOR IS THEREFORE AN ARTICLE OF INTER-STATE AND FOREIGN COMMERCE; IS "LEGITIMATE SUBJECT

OF COMMERCE," AND MUST BE PROTECTED LIKE ALL OTHER ARTICLES OF INTERSTATE COMMERCE; AND THAT SALE IN ORIGINAL, UNBROKEN PACKAGES IS INHERENT AND INSEPARABLE PART OF THE RIGHT OF IMPORTATION, IN THE SAME MEASURE, AS OTHER ARTICLES OF SUCH INTER-STATE COMMERCE.

II. THAT ALSO, BY SCOTT VS. DONALD, 165 U. S., 100, THE ALTERNATIVE OF PROHIBITION, CAREFULLY STATED BY THE COURT, AS A MEASURE OF EQUALITY THAT WOULD MEET REQUIREMENTS OF A VALID EXERCISE OF THE POLICE POWER WAS: "PROVISION FOR "EQUAL REGULATION FOR INSPECTION AND SALE OF ALL DOMESTIC AND IMPORTED LIQUOR:" SCOTT VS. DONALD, 165 U. S., 100. AND THAT THIS DISPENSARY LAW OF 1896 AND 1897, IS NOT SUCH A LAW, MAKES NO SUCH PROVISION, BUT DISCRIMINATES AGAINST COMPLAINANT'S CALIFORNIA WINES IN DENYING THEM ALTOGETHER ANY INSPECTION OR SALE WITHIN THE STATE.

PROPOSITION I.—THE DISPENSARY LAW 1896 AND 1897, OF SOUTH CAROLINA, BECAUSE NOT PURPORTING TO PROHIBIT THE MANUFACTURE, SALE AND USE OF INTOXICATING LIQUORS, IS FOR THIS REASON, NOT WITHIN THE SCOPE AND OPERATION OF THE WILSON ACT AND THAT LIQUOR IS THEREFORE AN ARTICLE OF INTER-STATE AND FOREIGN COMMERCE; IS "LEGITIMATE SUBJECT OF COMMERCE," AND MUST BE PROTECTED LIKE ALL OTHER ARTICLES OF INTER-STATE COMMERCE; AND THAT SALE IN ORIGINAL, UNBROKEN PACKAGES IS INHERENT AND INSEPARABLE PART OF THE RIGHT OF IMPORTATION, IN THE SAME MEASURE AS OTHER ARTICLES OF SUCH INTER-STATE COMMERCE.

We must remember that the general attitude of the United States to this question is "Ardent spirits, wines, &c., are subjects of exchange, barter and traffic, like *any "other commodity* in which a right of traffic exists and are so recognized by the "usages of the commercial world, and the laws of Congress," (Eg. Revenue & Custom Laws,) Leisy vs. Hardin, 135 U. S., 110.

This Federal policy is that liquor is in "Commerce." The Wilson Act "gave the State no more power," but allowed a

COPY BOUND CLOSE IN CENTER

"State law (eg. prohibition) that took it out of *domestic commerce* to "*operate sooner*," *i. e.*, on arrival and before sale in original packages, and thus take it *also* out of Federal and inter-state commerce as to that State. (*In Re* Rahrer, 140 U. S.) 562.

But when the State Dispensary law, does not take liquor out of domestic commerce, how can it be claimed to "operate sooner" to take it out of federal or inter-state commerce?

How can it do for Federal or Inter-State commerce what it does not do for domestic commerce?

If it is in domestic commerce, how is it possible to take it out of Federal or Inter-State commerce, when the Wilson Act was for the purpose of taking it out (as an exception) of Federal or Inter-State commerce *only* when by State Law it "ceased to be a commercial commodity," *i. e.*, taken out of *domestic* commerce.

The State is estopped to say it can be taken out of Federal or Inter-State commerce, when it is and remains in domestic commerce.

It is perversion of the privilege and of reason, to say that it is to remain in domestic commerce and yet be taken out of Inter-State commerce!

If then it is in domestic commerce (as it surely is under Dispensary Law) it is and must be also sold in Inter-State commerce: and being in Inter-State commerce, it is, like all other articles of Inter-State commerce, a subject of traffic and importation with the inseparable, inherent right of sale in original package as a "constituent part of inter-state commerce," as a "means of its incorporation into the general mass of the property of the State." (Brown vs. Maryland. Leisy vs. Hardin, 135 U. S. Lyng vs. Michigan, 135 U. S. *In Re* Rahrer, 140 U. S.)

This is the position declared by the Supreme Court in *Donald vs. Scott, 165 U. S., 100*, not once but repeatedly, and in

the same terms. It is not only unanswerable as a logical deduction from the legal history of the subject matter and the principle involved, but it is now *decided law* by the Supreme Court, and binding as a fixed legal generalization with its premise and its conclusion :—

"So long, however, as State Legislation continues to recog-"nize wines, &c., as articles of lawful consumption and *com-*"*merce*, so long must continue the duty of the Federal Courts "to afford such use and *commerce* the *same measure* of protec-"tion, under the *Constitution and Laws of the United States, as* "is given to *other articles.*"

Donald vs. Scott, 165 U. S., 91.

That is so long as the State continues it in domestic commerce, so long must the Federal Courts protect it in *inter-state commerce*, under the Constitution and Laws of the United States with the *same measure* of protection as is given to *other articles* in inter-state commerce, *i. e.*, importation with inherent right of sale in original imported packages.

Again this Court say :—

"Whatever else may be said of this Act, it was not intended "to prohibit the manufacture, sale and use of intoxicating "liquors, on the contrary, liquors and wines are recognized "as commodities which may be lawfully made, bought and sold, and *must therefore* be deemed to be the subject of foreign and *inter-state commerce.*"

Donald vs. Scott, 165 U. S., page 93.

If the domestic commerce shop, State Liquor Dispensary, is open, then the inter-state commerce shop (sale in original, imported packages by importer) must also be open.

That is, the State makes these wines and commodities subjects of domestic commerce, and *therefore* they must be subjects of inter-state commerce, *i. e.*, importation and sale in imported, original packages.

Again, this Court say: "It (State Dispensary) is not a law pur-"porting to forbid importation, manufacture, sale and use of

COPY BOUND CLOSE IN CENTER

" intoxicating liquor as articles detrimental to the health,
" morals and welfare of its inhabitants, and *hence* it is not
" within the scope of the Act of Congress of August, 1890."
(Wilson Act.)

They are "articles whose manufacture and use are not for-
" bidden and are therefore the subjects of legitimate com-
" merce."

Donald v. Scott, 165 U. S. 100.

That is, again, by State Dispensary system, wines, etc., are in lawful *domestic* commerce, and hence not within the scope of the Wilson Act, and therefore the subjects of legitimate inter-state commerce.

To repeat the principle the Supreme Court say, you have not taken it out of domestic commerce and you will not be heard to say that it is not a lawful article of inter-state and Federal commerce. On such a state of facts, the Supreme Court say. "The Wilson Act does not apply. This case is not
" within its scope and operation. The Federal privilege still
" inheres in the original, imported package by sale to become
" a part of the property of the State where same goods are
" manufactured and sold." Or in final words of the Court in this particular phase of the question. (*Donald v. Scott, 165 U. S. p. 100.*)

"The State cannot, under the Congressional legislation re-
" ferred to (Wilson Act) establish a system which in effect dis-
" criminates between *inter-state* and *domestic* commerce in com-
" modities to make and use which are admitted to be lawful."
p. 100.

That is, the State cannot say "this is lawful domestic commerce" without also saying there is lawful inter-state commerce in the same article. That is, the functionaries of the State cannot import and sell the imported, original packages, thereby affirming as existing within the State a right of sale, a wholly Federal right inhering in the *original imported package* as such

in Federal commerce, and deny to the citizen producer of another State the same right of sale of original imported package, which is a Federal right in lawful inter-state commerce, under Constitution of the United States not depending on the power or will of the States to grant or deny.

So that viewed in every aspect the Wilson Act does not operate here, and the wine is both in domestic and Inter-State commerce and a right of sale, inheres in original, imported packages as an inseparable part of Inter-State commerce itself.

It is clear, therefore, that the policy of the Wilson Act of Congress, 1890, as construed by the Supreme Court in *In Re Rahrer* and *Donald vs. Scott*, 165 U. S., 100, was

(1.) To enable a State to enforce its prohibition laws by taking liquor out of inter-state commerce, provided the State took liquor first out of domestic commerce.

(2.) The Act was not, however, intended to be seized upon by the State as a means to enforce an inter-state trade monopoly in its own liquor products and those of some of other States.

(3.) The people of this country in Congress assembled, in deference to the prohibition sentiment wherever it might exist, offered the several States a means whereby they could take liquor out of all commerce, domestic and inter-state They did not, however, mean to turn over to any State the liquor trade, inter-state and domestic, to run it for her exclusive benefit, further her own business, and revenue, and exclude wholly or in part all the States and products and citizens of other States for such inter-state business when lawfully there carried on.

(4.) In other words, the Wilson Act is a shield for the defence of the State, not a sword of offence to injure other States, their citizens and products in discrimination and monopoly, and exclusion of them from participation in a lawful business

of inter-state commerce, (*i. e.* importation and sale in original, imported packages,) in which they are equally entitled to share, if the inter-state trade is carried on at all.

THE SECOND PROPOSITION, INDEPENDENTLY URGED, IS THAT ALSO BY SCOTT VS. DONALD, 165 U. S., 100, THE ALTERNATIVE OF PROHIBITION, CAREFULLY STATED BY THE COURT AS A MEASURE OF EQUALITY THAT WOULD MEET REQUIREMENTS OF A VALID EXERCISE OF THE POLICE POWER, WAS:

"PROVISION FOR EQUAL REGULATION FOR INSPECTION AND SALE OF ALL DOMESTIC AND IMPORTED LIQUOR," DONALD VS. SCOTT, PAGE 100; AND THAT THIS DISPENSARY LAW OF 1896 AND 1897 IS NOT SUCH A LAW, MAKES NO SUCH PROVISION, BUT DISCRIMINATES AGAINST COMPLAINANT'S WINES IN DENYING THEM ANY INSPECTION OR SALE WITHIN THE STATE.

In Donald v. Scott, 165 U. S., 100. The Supreme Court say of the Wilson Bill :

"That law was not intended to confer upon any State the power to discriminate *injuriously* against the products of other States."

Donald v. Scott, 165 U. S., p. 100.

And the Court say: "The question whether a given State "law is a *lawful* exercise of the *police power* is still open and must remain open to this Court." Idem. 100.

And the Court states the *alternative* which the State of South Carolina and every State must face on this question.

(1.) "Such a law may forbid entirely the manufacture and "sale of intoxicating liquors and be valid." p. 100.

(2.) "Or it may *provide* equal regulations for the *inspection* "and SALE of *all* domestic and *imported* liquors, and be valid." p. 100.

The South Carolina Statute has not done the first and it must do the second, to be a lawful exercise of the *police* power. This second alternative requires:

(1.) That the State actually *provide* for inspection and *sale* of *all* domestic and *imported* liquor.

The State of South Carolina has not made such provision for inspection and sale of "*all*" imported liquor. Inspection and sale are, under the State law now and for seven years have been actually denied Vandercook & Co's *imported liquor*, the wines of California vineyards. fol. 90. Record.

(2.) In addition the State must also provide "equal regulation" for the inspection and *sale* of *all* domestic and *imported* liquor.

The State has not made any regulations at all for *inspection* and *sale* of Vandercook & Co's imported California wines. Her regulation is denial of sale and inspection altogether and regulations therefor. It is a policy therefore of denial and exclusion altogether of *some* imported liquor.

Under the express language of Donald v. Scott, 100 on this very point this law is therefore not a valid "*exercise of the police power*," and is void.

The words are "all imported liquor." Now here are Vandercook's California wines which are some "imported liquors," a part of *all* imported liquors, for which there is no provision for inspection and sale in South Carolina, although there is provision for inspection and sale of domestic liquors both within the State and outside of the State, and inspection and sale only of such imported liquor as the State may choose or not to import.

In this system, therefore, Vandercook & Co.'s wines from California vineyards are excluded, though they are by the express terms of the Supreme Court of the United States entitled to equal provision for "inspection and sale" under equal regulation within the State. This is the very gist of this ques-

COPY BOUND CLOSE IN CENTER

tion. The Attorney General of South Carolina ignores it by qualifying the words "*all* imported liquors" by adding "imported by the Dispensary." This is the vice of his whole argument. This opportunity of inspection and *sale* of *all* imported liquor is the sole means whereby the product of all other States compete with and secure their equality of right and privilege with local products in the market of the State.

DISCRIMINATIONS.

1. It is discrimination to have regulation of inspection and sale of domestic liquor, and *some* imported liquor, when the law requires a system of "inspection and sale of *all* imported and domestic liquor." (Donald vs. Scott, p. 100.) Just in this Vandercook & Co. California wines are excluded, for there is no provision for *inspection and sale* of their imported liquor when there is actually being inspected and sold domestic liquors and *some* imported liquor as State may choose to buy and inspect.

(2.) It is equally a discrimination to discriminate against citizens and products of California in favor of products of Georgia, as to discriminate in favor of the products of South Carolina.

"But the State may, not under the *guise of exerting its police powers or of enacting inspection laws*, make discriminations against the products and industries of some of the States in favor of the products and industries of its own or other States." Brimmer vs. Rebman, 138 U. S. 82.

(3.) By Donald vs. Scott citizens who wish to use foreign wines have a right to the "exercise of their own judgment and taste in the selection of commodities." P. 99, 165 U. S. Is it not a discrimination in *opportunity* against Vandercook & Co. California wines to deny them the right to be offered for sale under inspection in original imported package of wine in South Carolina for "citizens to exercise their judgment and taste in selection of commodities," while the State Dispensary is offering for sale to same citizens its stock of other liquor commodities for "exercise of their taste and judgment."

(4.) Is it not discrimination against Vandercook & Co. vineyards in *facility* to compel South Carolina citizen desiring their wines to incur trouble and cost of purchasing them in California and importing them for his own use (Minnesota vs. Barber, 136 U. S., 323,) while the like goods of same quality the State Dispensary sells him on the soil without any trouble. Is not this putting the California wines of complain ant, Vandercook & Co.'s goods at disadvantage?

(5.) Is it not discrimination in *time* against Vandercook & Co. California wines when they are denied selling, under inspection, their wines imported in original package immediately in present competition with the State, and the consumer is compelled to wait one month before he can get them from California by importation for use.

(6.) Is it not discrimination in *money* against Vandercook & Co., California wines when he is denied the one-fourth freight rate of carload lots of original imported packages consigned to his agent for local consumer generally, while the State enjoys this carload rate in its inter-state business of importation and sale; and he must ship to individual shippers separately at four times the freight. (In this case freight on car is $150, on same packages if separately sent $600.) How can Vandercook & Co. California wines compete fairly with local State wine and other wine sold by State Dispensary?

(7.) It is discrimination for the State in partnership with the city and county as to profits, to monopolize the sale, not only of domestic products, but also *original imported packages*, and take the profits of such inter-state business for the benefit of the treasury and people of the State, cities and counties, and exclude from such business the producers and importer for sale of original imported packages which is the "subject of legitimate *inter-state trade* and *commerce*," (Scott v. Donald, 165 U. S. 100,) and thus prevent the citizens of other States importing their products in original imported packages for sale as a means, under the Constitution, of incorporating their like products and equally pure products into the mass of the property of the State of South Carolina where it is a lawful commodity for use and sale under the law of the State.

COPY BOUND CLOSE IN CENTER

(8.) It is discrimination, again, for a State or any agent of the State, or any grantee or licensee of the State, to usurp and monopolize the privilege of importation for sale in original package always a right of *inter-state commerce*, in a lawful article of commerce, to the exclusion of the citizens of other States who are *citizens of the United States* in whom the right of inter-state commerce inheres as a Federal right under the Constitution of the United States.

(9.) It is the essence of discrimination to say to the California wine producer that the consumer in the State of South Carolina must go three thousand miles and buy only on the soil of California his wine, and deny the same producer to sell and to have ready for sale his imported and duly inspected original packages of wines in the State of South Carolina. for sale to the same citizen of South Carolina for his lawful use and consumption, while State monopoly has local wine product not better in quality, and in the same less bulk, always present for sale to the same consumer in the State of South Carolina. Under such a system both the business of the citizens of other States and the products of other States are discriminated against. (See Barber vs. Minnesota, 136 U. S., and Brimmer vs. Rebman, 136 U. S.)

In *Donald v. Scott* the police power was unsuccessfully invoked by South Carolina to defend the denial of importation for *use* on the ground that it was within the police power of the State to regulate, or even prohibit, the *use* of liquor, so the police power is even now invoked to defend the denial of importation for *sale*, on the ground that the State can prohibit or regulate sale, but the answer to both is apparent that although the State can regulate and prohibit the *use* of liquor, it cannot regulate it in discrimination ; and although the State can regulate and prohibit the *sale* of liquor, still it cannot regulate and prohibit the sale of such original imported packages in discriminations operating injuriously to products or business of other States, and it cannot regulate inter-state commerce in a lawful article of inter-state commerce.

"There is no difference in effect between a power to prohibit "the *sale* of an article and a power to prohibit its introduction "into the country."

Brown vs. Maryland, 12 Wheat., 439.

(10.) The same discrimination in principle that exists in denial of importation for *use* exists in denial of the importation for *sale*, because the importation for sale is one of the means of importation for use in commerce between the States. Indeed importation for sale is the usual, and almost universal means whereby the consumer in another State enjoys thereafter, after its sale in original package, the *use* of the foreign product. To prohibit it in discrimination is to prohibit and affect by discrimination the eventual *use* of foreign product.

Brown vs. Maryland, 12 Wheat., 439.

The importation for sale is the usual means in inter-state and foreign commerce whereby the products of other States and foreign countries are incorporated into and become part of the mass of the property of the State, and has always been held where there is lawful inter-state *commerce*, that sale is an inseparable part of importation. (See Brown vs. Maryland, *Supra*, 12 Wheaton, 439.)

(11.) It is discrimination to forbid the importation for sale by the complainant producer in California when the State is itself giving its local product *free sale* to all consumers within the State.

(12.) It is discrimination against foreign products when the local product is being sold in packages from one-half pint to five gallons, to prevent the imported original package from being sold as such by importer, such a system discriminates between *domestic* commerce shop and *inter-state commerce* shop.

(13.) It is discrimination against the business and trade of a citizen of another State to deny his sale of his goods in original imported packages, that is, incorporation of his goods into the mass of the property of the State of South Carolina, when the State is herself selling the products of her own State through her agents.

COPY BOUND CLOSE IN CENTER

(14.) It is discrimination against the *use* of the products of California when the State forbids an importation for *sale* of the products of Vandercook & Co., California vineyards, for the *use* of the citizens of South Carolina, while she is *selling* within her limits her own products for the *use* of the citizens of South Carolina.

(15.) It is discrimination against the products of other States when the State of South Carolina provides for *inspection and sale*, within the State of South Carolina, of wine products of South Carolina for the use of the citizens of South Carolina and does not provide for the inspection and sale, within the State of South Carolina, of all the wine products of all other States choosing to come to it for such inspection and sale.

(16.) It is discrimination against the products of other States when the State gives to a Board of Control the right to conduct, in their discretion, the business of importing for sale and selling intoxicating liquor as *they choose*, in exercise of "their taste and judgment," in the State of South Carolina, and not providing for the sale (under like inspection) of goods of other States, in original imported package of equal quality, that *choose to come* to South Carolina for sale.

(17.) It is discrimination for the State of South Carolina, in *selling* to her own citizens in broken and unbroken packages, for use, the products of her State and such products of other States as she may choose, or not, to import, and forbid the sale of all other products of other States for the *same use* by her citizens, and to deny inspection and sale of all such other products to her citizens by the importer for sale of such products in original unbroken packages, by which means alone such other products can enter the market of the State and become incorporated in the mass of property therein in the course of trade for the use of the consumer within the State.

(18.) It is discrimination against the business of citizens, producers of other States, for the State of South Carolina, by her

agents, to sell her own products in broken and unbroken packages, and some products of other States in imported original, unbroken packages, and derive profits from such sale and business, and deny the citizens of other States to sell their products in imported original unbroken packages, and thus deny them a share in the *inter-state commerce* business of importing and selling such imported original, unbroken packages.

(19.) It is discrimination on the part of the State when, by *Scott and Donald*. importers are entitled to " provisions of equal regulations for *inspection* and *sale* of *all imported* and domestic liquors," to allow no inspection and sale to the importer for sale of the wine products of California, and to engage herself inspection and sale of wine products of the State of South Carolina.

(20.) It is discrimination against the California products of complainant to allow the products of South Carolina to be sold by the State, and not allow the complainant to bring consigned to his agent in carload lots at *one-fourth* the freight rate that single packages cost, and deliver to their customers here, their wines receiving therefor here the price of their liquors of the same quality as the domestic liquor sold by the State to her citizens.

(21.) This discrimination is so clear and so crushing in its operation that if every other State in the Union should pass a State liquor dispensary law like that of South Carolina and thereby keep out the wine products of the plaintiff's California vineyard, while getting their liquor supplies from their own State or such imported liquor as they choose or not to import from other States, the whole business of California, as the wine producing State in this Union, would be crushed out and the industries, fortunes and investments of her people, now protected under the Constitution of the United States by the right of free trade in her wines when a lawful article of commerce (as they are here,) would perish, But this disastrous discrimination, under the operation of a universal State liquor dispensary law, enacted by all States except California, would be

COPY BOUND CLOSE IN CENTER

void because the Supreme Court of the United States has declared that *under the dispensary system* the duty of the Federal Court is to protect wine "like any other article," and that inasmuch as it is lawfully manufactured, bartered and sold within the State of South Carolina, it is a "legitimate subject of *Inter-State commerce*," that "it is not within the scope of the Wilson Act," and that it is a subject of barter, sale and exchange as a lawful commodity between the citizens of the States.

This discrimination against the products of other States existing, it is a violation of Federal law and therefore makes the present State system void, and it is immaterial what agency is employed or what system is employed to effect the discrimination and destroy the right of citizens and products of other States Whether it be the grantee or licensee of the State, or the sole monopolist under State sanction, or the State herself, each and all under any and all systems, that operate in discrimination, are powerless to destroy the Federal Constitution and the right of the citizens of the United States thereunder, and all such laws are null and void.

The decision of Donald v. Scott, 165 U. S., 99 is based on this very doctrine. It refers to the "State functionaries" and holds void their exclusive right to determine by their "taste and judgment" the liquor for local consumption, declaring that citizens cannot be deprived of *their own* "taste and judgment in the selection of lawful commodities," p. 99. That is, the monopoly of the State so operating is unconstitutional. This is the very marrow of that opinion.

THE LIMIT OF THE POLICE POWER.

The Supreme Court has stated the scope of police power in *domestic* commerce:

"There are few sources of crime and misery to society equal to the *dram shop*,, where intoxicating liquors, in small quantities, to be drunk at the time, are sold indiscriminately to all parties applying. The statistics of every State show a greater

amount of crime and misery attributable to the use of ardent spirits obtained at these *retail liquor saloons* than to any other source. The sale of such liquors *in this way* has, therefore, been at all times, by the Courts of every State, considered as the proper subject of Legislative regulation. Not only may a license be exacted from the keeper of the saloon before a glass of his liquors can be thus disposed of, but restrictions may be imposed as to the class of persons to whom the liquor may be sold, and the hours of the day and the days of the week on which the saloons may be opened. Their sale in *that form* may be absolutely prohibited. It is a question of public expediency and public morality, and not of Federal law. The *police power* of the State is fully competent to regulate the business—to mitigate its evils, or to *suppress it entirely*. There is no inherent right in a citizen to *thus sell* intoxicating liquors *by retail;* it is not a privilege of a citizen of the State or of the United States."

Crowley vs. Christensen, 137 U. S., 91.

We ask the Court to note that this does not touch the inter-state *sale* of California wine in unbroken original imported package, which is no more harmful than importation of same package for use, or buying same package or less quantity from State Dispensary.

But it is the privilege of citizen of United States, importer for sale, to sell the *imported unbroken* package, if liquor is a lawful article. The State of South Carolina has abolished the saloon in exercise of *police power*, but has *not* gone further; but the State is selling not only broken packages, one-half pint to five gallons, but also the identical imported original *unbroken packages*, as a part of her public policy, that Vandercook & Co. claim the right to sell, the "*unbroken imported package*" of their California wines, for "lawful use and consumption within this State."

It is an exercise of the police power to say:

(1.) Liquor shall be inspected.

COPY BOUND CLOSE IN CENTER

(2.) Liquor shall not be sold except between certain hours, or on certain days.

(3.) Packages of liquor shall not be opened or drunk on the premises where sold.

(4.) Shall not be sold to drunkards or minors.

(5.) Liquor should not be sold in certain cities or towns.

None of these discriminate against the wine product of other States, and are equal as to the operation on both.

All of these police regulations the Circuit Court has declared binding on Vandercook & Co., in sale of their California wine in original imported packages. (See Final Decree.)

(6.) But it is *not* an exercise of the *police power* to exclude altogether from importation and sale in the State, under the *equal police regulations*, the original imported packages of wines of California, when State agents are selling her own products and such as she chooses of other States under same regulations.

It is not an exercise of the police power to exclude from inspection and sale under these equal regulations any original imported package of wine of any producer desiring to sell his product in South Carolina. We do not object to the regulation operating equally, but do object to the denial of *sale* altogether for our California wine products under the same regulations, under which there is being sold by the State the local products and some imported products.

If the State system had allowed Vandercook & Co. to put and keep upon the State market for sale their wine products in original imported packages, or in any other way give Vandercook & Co. an opportunity to put and keep their products for sale in this State alongside of, and in competition with the wines actually sold in the State we could not complain, but it is gross discrimination to deny altogether importation and sale and the opportunity of having citizens of South Carolina buy within the State, California wine products in original imported pack-

ages, when in the State the same citizen is actually buying from the State similar local wine products of no better merchantable quality, in both broken and unbroken packages, from one half pint to five gallons.

Under the *operation* of this Dispensary system, South Carolina, while selling millions of gallons of local liquor product a year, can forever deny the sale of any California wine products within this State!

Under the *operation* of this Dispensary system all other States of the Union in enacting a like liquor Dispensary law could exclude California wine from sale within their borders, while they were selling their own liquor products and products of such other States they may choose or *not* to import, and thus literally destroy California and its wine industries. This is the natural *operation* of the Dispensary law, and its destruction of *inter-state commerce* in an article to make, use and sell which it is admitted to be lawful. And it is to its operation and effect that the Court looks to determine whether it is an exercise of the police power. And when it operates in discrimination or injuriously against other States, its citizens or products, its is void. Donald vs. Scott. 165 U. S. 100.

The State Cannot represent citizens of other States and monopolize Inter-State Trade in any Lawful Article of Commerce.

His Honor, Circuit Judge Simonton, in his last utterance set forth this discrimination by necessary operation of the law very clearly in *Ex parte Snyder, 74 F. R. 859.* Speaking of the Act of March 6, 1896, which is the same to day as to importations *for sale*, he says:

"The Act now in question secures in the State Board of Control a monopoly in the *import and sale* of intoxicating

COPY BOUND CLOSE IN CENTER

liquors, however chemically pure they may be. The Constitution of the United States secures to the citizens of every one of the United States privileges enjoyed in every other State They cannot be *discriminated* against by State legislation. To them commerce between the States must be free. All legislation, therefore, putting *citizens of other States* at a disadvantage in any State, because they are citizens of other States, is void. Any *local regulation* which, *in terms or by its necessary operation denies equality in the markets of the States, is, when applied to the people and products or industries of other States, a direct burden upon commerce among States, and therefore void.* Brimmer vs. Rebman, 138 U. S. 82, 11 Sup. Ct. 213. Nor can it *in principle* make any difference if this equality is denied to citizens of other States because the State herself, through certain agents, engages in the competing business, and asserts her monopoly in it. She may forbid the business altogether, or she may forbid her citizens from carrying it on except upon conditions and restrictions, however stringent. No citizen of any other State can claim greater privileges than her own citizens. But when *she herself* conducts the business, through her agents all over the State, and *takes the place of her citizens*, she cannot, by thus coming into competition with citizens of other States, destroy their competition by denying them the *right to trade* in the same commodity in every respect like that in which she is trading, save that it is not protected by a certificate which she alone can give, and which she distinctly withholds."

"The present Act gives to certain persons (the Board of Control) the sole power of purchasing and importing into this State an article recognized everywhere as an article of *commerce*. The monopoly is vested in them by provisions of such stringency secured by such extraordinary sanctions, that every other person and *all citizens of other States* are absolutely deprived of *competition* with them. Thus the *products as well as the citizens of other States* are *discriminated* against, and the inter-state commerce is destroyed. The Act in question is in conflict with the Constitution and laws of the United States."

Ex parte Snyder, 74 R., 863, 864.

The State of South Carolina may in *domestic commerce* take the *place of her own citizens*, but she does not and cannot represent producers, the *citizens of other States*, whose inter-state commerce rights and products are discriminated against here,

The State is as a "private citizen" in inter-state trade, and must in inter-state trade meet and compete with private citizens of other States as *citizens of the United States*.

"It is, we think, a sound principle, that when a government becomes a partner in any *trading* company, it divests itself, so far as concerns the transactions of that company, of its *sovereign character*, and takes that of a *private citizen*. Instead of communicating to the company its privileges and its prerogatives, it *descends to a level* with those with whom it associates itself, and takes the character which *belongs to its associates*, and to the *business* which is to be transacted."

U. S. Bank v. Planters' Bank, 9 Wheaton, 907.

Therefore there is no sovereignty about this trade, and the State is like a *private citizen* in the trade—running a monopoly under State laws. It has descended to the level of associates and *business* it transacts is the inter-state *liquor trade*.

"The relation of *sovereign* and *trader* is inconsistent."

Adam Smith, *Wealth of Nations*, 3 Vol. 357.

Mr. Webster, in Gibbons vs. Ogden, 9 Wheaton, 24, in showing that the exclusive grant by New York State to Livingston of the steam navigation was void as a regulation of commerce, said also: "But this is not all. It requires no greater power, to grant a monopoly of *trade*, than a monopoly of navigation." Page 24.

"The people of New York have a right to be protected against this monopoly. It is one of the objects for which they agreed to this Constitution, that they would stand on an equality in commercial regulations; and if the government should not insure them that, the promises made to them, in its behalf, would not be performed," P. 25.

And in this case, in deciding that the State could not create a monopoly of navigation, which is a *part of commerce*, decided also that the State could not create or maintain a monopoly of any other part of inter-state *commerce*."

Gibbons vs. Ogen, 9 Wheat., 24.

If *inter-state commerce* exists at all it must be shared by the State as a "private citizen," with citizens of other States in whom it inheres as *citizens of the United States* and secured to them equally under the Constitution of the United States.

Inspection Law

The inspection feature of the Dispensary Law of 1896 and March 5, 1897, Sec. 1, is null and void on each of the following grounds:

(1.) Because of Sec. 1, of the Act, 1897, the positive test is "alcoholic purity" upon analysis by State chemist, which test in terms was held by the Supreme Court of the United States to be unreasonable and void.

Donald vs. Scott, 165 U. S., 100.

By Section 1, "all alcoholic liquor must be pure and must be free from (that is must not have) anything poisonous, deleterious, &c. When found to be free from poisonous matter, &c., *i. e.*, complying with negative test, it must also conform to the sole positive test, "alcoholic purity," (whatever that may mean,) condemned by Supreme Court in terms as unreasonable.

(2,) Because no certain known crucial test is prescribed, but same is left to discretion of chemist. There is nothing definite which a wine producer can surely comply with. Nothing either positive or negative as to ingredients or composition.

The standard which an inspection law requires must be one which the producer can reasonably conform to; 136 U. S., 328. When a *chemist* is to *analyze*, the producer should know what by law the chemist must or must not find in the wine, beer or spirits to make it merchantable. His arbitrary dictum, shifting discretion or unknown standard might be oppression.

(3.) Because it operates extra territorially upon persons and property outside of the jurisdiction of the State, in requiring a certificate to be attached by *consignor* in another State to the wine package in another State, as a condition of right of importation by residents in this State. This also a burden on inter-state commerce. Of such a State Certificate, this Court said:

"It is not an exercise of the jurisdiction of the State over "persons and property within its limits. On the contrary, it "is an attempt to exert that jurisdiction over persons and "property within the limits of other States."

125 U. S., 498. (Bowman vs. Chicago.)

"But such extra territorial powers cannot be assumed upon "such an application. On the contrary, the nature of the case "contradicts their existence. For if they belong to one State "they belong to all, and cannot be exercised severally and "independently."

125 U. S., 499. (Idem.)

Again, by the Wilson Act, August, 1890, it is only "on arrival" that intoxicating liquor become subject to an inspection law, as part of police power of the State. The Dispensary Law of South Carolina would attempt to subject liquor to inspection while in another State, and beyond its jurisdiction.

(4.) Because it confiscates the wine arriving in this State, without a certificate, even if on local inspection after arrival it is found pure. It is, therefore, not inspection securing to the citizen the due quality of his goods and passing them if found pure in this State.

COPY BOUND CLOSE IN CENTER

The imported package without certificate by Section 31, is seized, tested actually by the State Chemist, and if pure furnished through the State Dispensary. Found pure under local inspection it should be passed to the owner as lawful merchandise.

Bowman vs. Chicago, 125 U. S., 488–489.

(5.) Because it is an unusual, unprecedented inspection system, against the known laws and customs of inter-state trade and commerce, and therefore "*unreasonable*" and void. It is the only article of commerce so treated by this State or any other State or country at any time in the history of the world. Thus it appears it was solely to burden inter-state commerce and delay the consumer, in aid of the business and revenue and discriminating policy of State Dispensary.

(6.) Because it requires a new chemical analysis of sample every time a purchaser orders for importation the same wine from the same producer. This is mere vexation and unnecessary delay, accomplishes no purpose but obstruction. Especially when the sample is not officially taken from the actual package, which is never inspected officially by the South Carolina Law.

(7.) Because it is unreasonable in the time lost in sending a sample from producer to State Chemist and back, when in inter-state commerce the right of importer is to have the imported packages move immediately to him without obstruction for local inspection within the State "on arrival." The real object is seen in its effect in forcing purchasers of wine to buy of State Dispensary rather than wait indefinitely. This is simply ingenious obstruction of inter-state commerce. No such time is lost in ordinary methods of local inspection "on arrival" within the State, when inspection laws operate by Wilson Act, (August, 1890.)

(8.) Because with all its elaborateness and delay this inspection does not ensure *due quality* to the citizen consumer for the test is by sample not taken from the actual package officially and leaves the foreign producer free to ship a package of another

quality. In labored effort it furnishes no security but it leaves the door wide open for fraud and imposition by non-resident producer, and this is true of all dispensary liquors also, which are by sample test sent in advance, and not taken from actual package by officials.

It does not conform therefore to the spirit or purpose of an inspection law. It is only a mere sham, a blind to raise revenue, and discriminate.

Bowman v. Chicago R. R., 125 U. S., 488-489.

(9.) The inspection law is moreover void as to importer *for sale* in original packages, because it denies him an opportunity of inspection of such packages altogether.

Section 1, Act 1896 and 1897 confines inspection to importer for his *own use* and no provision is made in the statute for inspection of importations of original packages for sale by foreign producer.

The Supreme Court said in such case "that a mode of inspection to which *citizens of other States* having oils which they desired to *sell* in Kentucky *market*, could not have reasonably conformed, it would undoubtedly have been held to be an unauthorized burden upon Inter-State *Commerce*."

Minn. v. Barber, 136 U. S., 328.

Here there is complete denial of inspection, and the imported California wines are even confiscated, when the duty of the State was to have afforded an inspection system to which complainant could conform.

RELIEF GRANTED IN THIS CASE.

The relief granted is by the protection of original imported packages of the California wines of Vandercook & Co., against this discrimination, *i. e.* to enjoin their seizure, &c., allow their sale and opportunity of sale in the State in the same way as if the provision now existing for inspection and sale had been by law extended also to their wines, *i e.*, to be allowed to sell in

CARY BOUND CLOSE IN CENTER

original imported packages under any valid inspection law as to quality the State might exact, also in such sale to conform to all police regulations applying without discrimination to all sales, *i. e.* to sell within the lawful hours of sale; to sell in the unbroken imported package, not to be opened or drunk on the premises; and not to be sold to drunkards or minors, and only in those cities or towns when by law intoxicating liquor is sold as a beverage.

We ask to be relieved of nothing that is a lawful exercise of the police power of the State, we only ask to be relieved of the the discrimination and wrong of failure of provision for and denial of opportunity of *any sale at all* within the State, when there is actually being sold in the State local liquor and *some* imported liquor.

We ask also the protection of our imported original packages after sale in the hands of the purchaser for lawful use and consumption within this State, to the same extent as the importer for personal use who may have bought same package from us in California, is protected in his lawful possession and lawful use of same, in the language of the injunction in *Scott v. Donald*, 165 U. S. 100, in fact, the same protection and no more that the purchaser of the original imported package of wine from complainant would have, if he bought the same (*e. g.*, a case of imported wine) from the State Dispensary.

PRACTICAL RESULT OF RELIEF GRANTED.

The result of this protection of complainant, California wines from discrimination in no way effects the exercise of the police power of the State, or to hinder and prevent the attainment of any object within the lawful scope of the police power, or the attainment of any object within the provision of the lawful police provisions of the Dispensary Law. It only tends to lessen the profit of the State business, a strictly revenue feature and not within the power of the State to raise, in exercise of *police* power. Brennan v. Titusville, 153 U. S. 289 so as to wines also In Re *Lebolt*, 77, F. R. 587, *590*.

(1.) The quality of the wine is the same under inspection system, and wine by the State law "not being detrimental to the welfare of the State and the health of its inhabitants." Scott v. Donald, 165 U. S. 100, but only its due quality to be ascertained under inspection, all police purposes would be attained in this respect.

(2..) The business would be still restrained by criminal penalties to strict conformity to lawful police provisions for *sale* of liquor.

(3.) The consumer in the State of South Carolina does not get any different wine in qualtity, only an opportunity to exercise on the soil " his own taste and judgment," a right he cannot constitutionally be deprived of. (Scott v. Donald, 165, U. S. 99.) and now exercises in importation for use, at great cost and trouble.

(4.) The local purchaser, from Vandercook wine agency, has no larger right than the importer for use of the same package now has, who has bought the same in California at great cost and trouble, and consumed one month in importing it.

(5.) There is only one difference, and that is in profit of State-business "money making," and this is, as we have seen, not an object within the police power of a State. But this the State must expect when it descends to the level of those who trade especially in inter-state trade and commerce, (9 Wheaton, 907,) in the same way it must expect competition and doubtful result as to profits. if it assumed by officials the drug trade or tobacco trade.

(6.) In short, the only thing changed by the relief afforded by this injunction is remedying the discrimination, this Federal wrong of exclusion, denial of inspection and sale and confiscation of our wines, and putting our wines in original imported packages in the State market for sale, where they have as a California product, an equal *right of sale* under inspection and equal regulation, if any sale of any local or imported wine is had in the market of the State of South Carolina.

COPY BOUND CLOSE IN CENTER

CONCLUSION.

In conclusion we would urge upon the Court to consider the magnitude and far-reaching consequences of the principles here at stake.

The author of this Dispensary Law (Governor Tillman) thus announces the *new* political theory on which it is based:

"The law rests upon the idea that it is the proper thing to supply what the *people want* for their legitimate use."

"*If men will have it (intoxicating liquor) the State should supply it.*"—Message Governor Tillman to General Assembly South Carolina. House Journal 1893, p. 46.

It is not difficult to locate the school of political thought that announces as a new principle in our form of government that *the State should supply what the people want.*

Under this principle the whole business, trade and commerce of the State could be constitutionally turned into a system of official conduct of business, with an army of officers and State agents; and thus, instead of the individual citizen conducting trade with private capital and private enterprise, under the protection and restraints and regulations of the Government; the State would be conducting trade with public funds through official employees. To state this result is to demonstrate the falsity of the principle, for this result is simply Socialism and Paternalism and Communism and destroys the very purposes and trangresses all the bounds of "*civil* government" in the history of the Anglo-Saxon race, and as contemplated by the founders of these American commonwealths.

The character of sovereign and trader is inconsistent.
Adam Smith's Wealth of Nations, 3 Vol. 357.

See particularly *State vs. Beebe, 6 Ind., 501; Rippe vs Becker,* 57 N. W. Rep., 34; Supreme Court, Minn., 1894; Slaughter House Cases, 16 Wall, 61, 62, in which cases it was declared that the police power, as was understood in American Constitutional law, means simply the power of the State to im-

pose those restraints upon private rights which are necessary for the general welfare of all; and the police power of the State to regulate business does not include power to engage in or to carry it on.

And these cases were followed and principles declared by the State of South Carolina, in the cases of *McCullough vs. Brown, 41 S. C. Rep., 220, 1893.* But in a political revolution of South Carolina, af a reconstruction of the Supreme Bench of the State of South Carolina, in the case of the *State vs Aiken, 42 S. C. Rep, 222.* 1894, the Supreme Court of South Carolina reversed the former decision and declared, following the absolute and monarchical system of Continental Europe, that the State, in the exercise of the police power, could usurp and conduct a trade.

All of this new and startling policy for an American State in one aspect concerns the State alone, and is to be measured by her own Constitution and the policy of her own laws.

But in another and broader sense the far reaching consequences of the question and magnitude of the principle at stake does not stop with the State alone. Indeed it affects this whole country, for this is a commercial union as well as a political union of American States, and the bond of commerce is under the Constitution of the United States a practical, substantial and enduring bond of this union. And if the State of South Carolina could lawfully enact and enforce against the citizens and products of other States her existing State liquor Dispensary law, and exclude the pure products of other States and prevent the importation by producer for sale, for the use and consumption of the citizens and residents of South Carolina of such pure beer, ales, wines and liquors, the products of other States and foreign countries, and deny them inspection according to her own test and standard and sale under equal regulation, while the State is herself, through an official monopoly, selling the like products of her own State to all her citizens, then on the same principal the State of South Carolina, or any other State of the United States, could enact a State Dispensary law to

COPY BOUND CLOSE IN CENTER

assume the inter-state trade in any article capable of adulteration in the manufacture, and of abuse in the use, and there would be possible throughout the several States of the United States such institutions as the State liquor Dispensary, State butter Dispensary, State meat Dispensary, State tobacco Dispensary, State oil Dispensary, State flour Dispensary. etc., by which all these and other trades, in short, practically the whole inter-state trade and business of the country, would be monopolized by the State, selling to her own citizens her own products, and such products of other States as she may choose or not to import, or selling none of the products of other States, and excluding from the State all the products of other States of equal merchantable quality, when imported by the producers citizens of other States for sale, and use and consumption of her citizens, although she is selling at the same time to her citizens and her citizens are using as fit for consumption the identical local product of same merchantable standard or quality.

To state this inevitable result is simply to reveal the magnitude of the question here involved, and to show that such a principle generally embodied into law would result in wholesale discrimination and in the commercial anarchy of these States, and destroy the very bond of commercial union of the States of the United States. It is peculiarly the function of this Court to vigilantly guard the constitutional rights, privileges and immunities of the citizens of the United States here invoked by complainant, as an equal sharer in the benefits of this commercial union of all the States, and equally entitled to participate in inter-state commerce in wines, as an article of lawful commerce by the laws of the State of South Carolina.

J. P. K. BRYAN,

Counsel for Appellee, W. A. Vandercook & Co.

NOTE.—This brief is also submitted in No. 515 as argument for defendant in error, W. A. Vandercook & Co., against the constitutionality of the "Dispensary Law" of South Carolina, on the exceptions therein involving the questions herein discussed.

J. P. K. BRYAN,

Counsel for W. A. Vandercook & Co., Defendants in Error.

APPENDIX.

CONTAINING SOUTH CAROLINA DISPENSARY LAW OF MARCH 6, 1896.

(PP. 123-149) Vol. 22, Stat. S. C.

AND

AMENDATORY ACT OF MARCH 5, 1897,

(PP. 535-541) Vol. 22, Stat. S. C.

MARCH 6, 1896.

No. 61.

AN ACT to provide for the Election of the State Board of Control and to Further Regulate the Sale, Use, Consumption, Transportation and Disposition of Intoxicating and Alcoholic Liquors or Liquids in the State and Prescribe Further Penalties for Violation of the Dispensary Laws and to Police the Same. No. 115.

Section 1. Be it enacted by the General Assembly of the State of South Carolina, That the manufacture, sale, barter or exchange, receipt or acceptance, for unlawful use, delivery, storing, and keeping in possession, within this State, of any spirituous, malt, vinous, fermented, brewed (whether lager or rice beer), or other liquor, any compound or mixture thereof, by whatever name called or known, which contains alcohol and is used as a beverage, by any person, firm

The manufacture, sale or keeping of spirituous liquors prohibited, except as provided herein.

COPY BOUND CLOSE IN CENTER

A. D. 1896

or corporation; the transportation, removal, the taking from the depot or other place by consignee or other person, or the payment of freight or express or other charges by any person, firm, association or corporation upon any spirituous, malt, vinous, fermented, brewed (whether lager, rice or other beer) or other liquor, or any compound or mixture thereof, by whatever name called or known, which contains alcohol and is used as a beverage, except as is hereinafter provided, is hereby prohibited under a penalty of not less than three (3) nor more than twelve (12) months at hard labor in the State Penitentiary or pay a five of not less than one hundred dollars nor more than fiue hundred dollars, or both fine and imprisonment, in the discretion of the Court, for each offense. All such liquors except when bought of a State officer authorized to sell the same, or in possession of one and having beeu duly tested by the Chemist of the South Carolina College and found to be chemically pure, are declared to be contraband and against the morals, good health and safety of the State, and all alcoholic liquors in this State and not having been tested by the Chemist of the South Carolina College and found to be chemically pure are hereby declared to be of a poisonous and detrimental character, and their use and consumption as a beverage are against the morals, good health and safety of the State. and all such liquors may be seized wherever found, without a warrant, and turned over to the State Commissioner.

State Board of Control.

Section 2. A Board consisting of five members, to be known as the State Board of Control, shall be elected by the General Assembly at this session to carry out the provisions of this Act. The terms of office of the Board so elected shall be for one, two, three. four and five years respectively, and those elected shall determine by lot which shall take the respective terms. At the expiration of the term of office of each member his successor shall be elected for a term of five years. They shall receive for their services the same per diem and mileage as members of the General Assembly. The State Board of Control shall devise and inaugurate such a system of bookkeeping and accounting as they may deem advisable, and shall elect a clerk or bookkeeper, who shall hold his office during the pleasure of the Board and shall receive as compensation for his services a salary of fifteen hundred dollars per annum. The

COPY BOUND CLOSE TO EDGE

A. D. 1876.

State Board of Control, under such rules and regulations as may be adopted by said Board, shall purchase all liquors for lawful use in this State, and shall have the same tested and declared to be pure as hereinbefore and hereinafter provided.

Election of Commissioner; his duties, term of office, &c.

Section 3. That the State Board of Control shall, at the expiration of the term of the present Commissioner, and at the expiration of every two years thereafter, appoint a Commissioner, which appointment shall be submitted to the Senate at its next session for its approval; said Commissioner shall be believed by the State Board of Control to be an abstainer from intoxicants, and shall, under such rules and regulations as may be made by the State Board of Control, furnish all intoxicating liquors for lawful use in this State, to such persons as may be designated as Dispensers thereof, to be sold as hereafter prescribed in this Act. Said Commissioner shall reside and have his place of business in the city of Columbia, in this State, and hold his office two years from his appointment and until another be appointed in his stead. He shall be subject to removal for cause by the State Board of Control. He shall qualify and be commissioned the same as other State officers, and shall receive an annual salary of twenty-five hundred dollars, payable from the Dispensary fund upon the warrant of the State Board of Control. He shall be allowed a bookkeeper, who shall be paid in the same manner a salary of twelve hundred dollars, and such other assistants as in the opinion of the Board of Control may be deemed necessary. He shall not furnish to the County Dispensers any intoxicating or fermented liquors except such as have been tested by the Chemist of the South Carolina College and declared to be pure: Provided, That said Board of Control shall have authority to appoint such assistants as they may find necessary to assist the Chemist of the South Carolina College in making the analyses required by this Act; and the said Board of Control may fix such reasonable compensation, if any, as they may deem proper for the services rendered by such Chemist or such assistants. Each County Dispenser shall remit to the State Treasurer all moneys accruing to the State from the sale of liquors under such rules as may be prescribed by the State Board of Control, and the State Treasurer shall keep a separate account with said fund,

County Dispensers to remit to State Treasurer.

COPY BOUND CLOSE IN CENTER

A. D. 1896.

from which the State Board of Control shall draw from time to time upon warrants, or in such manner as they may provide, the amount necessary to pay the expenses incurred in conducting the business. All rules and regulations governing the said Commissioner or County Dispensers in the performance of any of the duties of his office, where the same are not provided for by law, shall be prescribed by the State Board of Control. The State Commissioner shall before entering upon the duties of his office execute a bond to the State Treasurer, with sufficient sureties to be approved in the same manner as the bonds of other State officers, in the penal sum of ten thousand dollars, for the faithful performance of the duties of his office. In all purchases or sales of intoxicating liquors made as contemplated in this Act, the State Board of Control shall cause a certificate to be attached to each and every package containing said liquors when the same is shipped to State Commissioner from the place of purchase, or by State Commissioner to the County Dispensaries, certified by their official signatures and seal, which certificate shall state that liquors contained in said packages have been purchased by the State Board of Control for use within the State of South Carolina, under the laws of said State, and shall also cause to be attached to all such liquors the certificate of the Chemist of the South Carolina College that samples of the same have been tested as required by this Act; and without such certificates any package containing liquors which shall be shipped from place to place within the State, or delivered to the consignee by any railroad, express company or other common carriers, or be found in the possession of any common carrier, shall be regarded as contraband and may be seized without warrant for confiscation, and such common carrier shall be liable to a penalty of five hundred dollars for each offense, to be recovered against said common carrier in any Court of competent jurisdiction by summons and complaint, proceedings to be instituted by the Solicitor of any Circuit with whom evidence may be lodged by any officer or citizen having knowledge or information of the violation; and any person attaching or using such certificates without the authority of the State Board of Control or any counterfeit certificate, for the purpose of securing the transportation of any intoxicating liquors within this

Bond of

Package shipped to have on them certificates.

What said certificates shall contain.

COPY BOUND CLOSE TO EDGE

State, in violation of law, shall, upon conviction thereof, be punished by a fine of not less than five hundred dollars and imprisonment in the Penitentiary for not less than one year for each offense. A. D. 1896.

Section 4. The State Commissioner shall before shipping any liquors to Dispensers, except lager beer, cause the same to be put into packages of not less than one-half pint nor more than five gallons, and securely seal the same, and it shall be unlawful for the Dispenser to break any of such packages or open the same for any reason whatsoever. He shall sell by the package only, and no person shall open the same on the premises: Provided, This Section shall not apply to malt liquors shipped in cases or kegs or bottles thereof shipped in barrels; and such malt liquors may be sold by the County Dispenser in such quantities, of not less than one pint, as he may see proper: Provided, The same shall not be drunk on the premises. Dispensers shall open their places of business and sell only in the day time, under such rules as may be made by the State Board of Control, or by the County Board of Control with approval of the State Board of Control. How liquors must be shipped and sold.

Section 5. It shall be the duty of the State Board of Control to appoint a County Board of Control composed of three persons believed by the said Board not to be addicted to the use of intoxicating liquors. The persons so appointed shall hold their office for a term of two years, and until their successors are appointed, and shall be subject to removal for cause by the State Board of Control. Said County Board of Control shall make such rules as will be conducive to the best management of the sale of intoxicating liquors in their respective Counties: Provided, All such rules shall be submitted to the State Board and approved by them before adoption. The members of the County Board of Control shall qualify and be commissioned as are other County officers without fees therefor. County Board of Control.

Section 6. Applications for positions of County Dispenser shall be by petition, signed and sworn to by the applicant, and filed with the County Board of Control at least twenty days before the meeting at which the application is to be considered, which petition shall state the applicant's name, place of residence, in what business engaged, and in what ...ness he has been engaged two years previous to filing County Dispensers, how appointed.

COPY BOUND CLOSE IN CENTER

A. D. 1896.

petition; that he is a qualified elector of this State and a resident of the County; that he has never been adjudged guilty of violating the law relating to intoxicating liquors, and is not a keeper of a restaurant or place of public amusement, and that he is not addicted to the use of intoxicating liquors as a beverage. The appointment shall be made only on condition that the applicant shall execute to the County Treasurer a bond in the penal sum of three thousand dollars, with good and sufficient sureties, conditioned that he will well and truly obey the laws of the State of South Carolina, now or hereafter in force, in relation to the sale of intoxicating liquors; that he will pay all fines, penalties, damages and costs that may be assessed or recorded against him for violations of such laws during the term for which said appointment is made, and will not sell intoxicating liquors at a price other than that fixed by State Board of Control. Said bond shall be for the use of the State and County or any person or persons who may be damaged or injured by reason of any violation on the part of the obligor of the law relating to intoxicating liquors purchased or sold during the term for which said appointment is made. The said bond shall be deposited with the County Treasurer, and suit thereon shall be brought at any time by the Solicitor or any person for whose benefit the same is given, and in case the conditions thereof, or any of them, shall be violated, the principal and sureties thereon shall also be jointly and severally liable for all civil damages, costs and judgments that may be obtained against the principal in any civil action brought by wife, child, parent, guardian, employer or other person under the provision of the law. All other moneys collected for breaches of such bond shall be distributed as other funds arising from the Dispensary. Said bond shall be approved as other official bonds for the County.

County Dispensaries, how located.

Section 7. There may be one or more County Dispensers appointed for each County, the place of business of each of whom shall be designated by the County Board, but the State Board of Control must give consent before more than one Dispenser can be appointed in any County; and when the County Board designates a locality for a Dispensary twenty days' public notice of which shall be given, it shall be competent for a majority of the voters of the township

COPY BOUND CLOSE TO EDGE

in which such Dispensary is to be located, to prevent its location in such township by signing a petition or petitions, addressed to the County Board, requesting that no Dispensary be established in that township. The County Board may in its discretion locate a Dispensary elsewhere than in an incorporated town in the Counties of Beaufort and Horry, and no others, except such as are authorized by special Act of the General Assembly: Provided, however, That any County, town or city wherein the sale of alcoholic liquors was prohibited by law prior to July 1, 1893, may secure the establishment of a Dispensary within its borders in the following manner: Upon petition signed by one-fourth of the qualified voters of such County, town or city wishing a Dispensary therein being filed with the County Supervisor or Town or City Council, respectively, they shall order an election submitting the question of Dispensary or no Dispensary to the qualified voters of such County, town or city, which election shall be conducted as other special elections; and if a majority of the ballots cast be found and declared to be for a Dispensary, then a Dispensary may be established in said County, town or city: Provided, That Dispensaries may be established in the Counties of Williamsburg, Pickens and Marion and at Seneca and other towns now incorporated in Oconee County without such election or compliance with the other requirements of this Act: Provided, That nothing in this Act contained shall be so construed as to prohibit persons resident in Counties which shall elect to have no Dispensary from procuring liquors from Dispensaries in other Counties, or County Dispensers from shipping same to their places of residence under proper labels or certificates: Provided, further, That nothing in this Act shall be construed to repeal an Act entitled "An Act to allow the opening of Dispensaries in Pickens and Oconee Counties," approved December 18th, 1894. A. D. 1896.

Section 8. If the application for the position of Dispenser be granted, the appointment shall not be made until the applicant shall make and subscribe an oath, before some officer authorized by law to administer oaths, which shall be endorsed upon the bond, to the effect and tenor following: "I, ————, do solemnly swear (or affirm) that I will well and truly perform all and singular the condition of the within bond, and keep and perform the trusts con- Oath of Dispensers; permits, &c.

COPY BOUND CLOSE IN CENTER

A. D. 1896.

fided to me to purchase, keep and sell intoxicating liquors. I will not sell, give or furnish to any person any intoxicating liquors otherwise than is provided by law, and, especially, I will not sell or furnish intoxicating liquors to any minor, intoxicated person or persons who are in the habit of becoming intoxicated, and I will make true, full and accurate returns to the County Board of Control on the first Monday of each month of all certificates and requests made to or received by me, as required by law, during the preceding month; and such returns shall show every sale and delivery of such liquors made by me or for me during the month embraced therein, and the true signature to every request received and granted; and such returns shall show all the liquors sold or delivered to any and every person as returned." Upon taking said oath and the oath required by the Constitution, and filing bond as hereinbefore provided, the County Board of Control shall authorize him to keep and sell intoxicating liquors as in this Act provided, and every appointment so made shall specify the building, giving the street and number or location, in which intoxicating liquors may be sold by virtue of the same, and the length of time in which the same shall be in force, which in no case shall exceed twelve months. Appointments made under this Act shall be deemed trusts reposed in the recipients thereof, not as a matter of right, but of confidence, and may be revoked upon sufficient showing by order of the County Board of Control; and upon the removal of any County Dispenser, or upon demand of the County Board of Control he shall immediately turn over to the County Board of Control all liquors and other property in his possession belonging to the State or County. Said County Board of Control shall be charged with the duty of prosecuting the County Dispenser or any of his employees who may violate any of the provisions of this Act. On the death, resignation or removal of a County Dispenser, or expiration of his term of office, the County Board shall appoint his successor.

Office and Clerk of County Boards; books and records; profits; compensation, &c.

Section 9. The County Board of Control shall use as their office the office of the County Supervisor of their County and shall elect one of their number as Chairman and clerk of the said County Board of Control. The County Board shall preserve as a part of the records and files of their office all petitions, bonds and other papers pertaining

COPY BOUND CLOSE TO EDGE

A. D. 1896.

to the appointment of Dispensers and keep suitable books in which bonds shall be recorded. The books shall be furnished by the County like other public records. The County Board of Control shall designate or provide a suitable place in which to sell the liquors. The members of the County Board of Control shall meet once a month or oftener, on the call of the Chairman, and each member of the Board shall receive a per diem of two dollars and five cents mileage each way, but they shall not receive compensation for more than thirty days in any one year, except in the County of Charleston, where they shall not receive compensation for more than sixty days in any one year, and in Barnwell County not more than fifty days in any one year. They shall, upon the approval of the State Board of Control, employ such assistants for the County Dispenser as may be necessary. The Dispenser and his assistants shall receive such compensation as the State Board of Control may determine. All profits, after paying all expenses of the County Dispensary, shall be paid, one-half to the County Treasurer and one-half to municipal corporation in which it may be located, such settlements to be made quarterly: Provided, That if the authorities of any town or city, in the judgment of the State Board of Control, do not enforce this law, the State Board may withhold the part going to the said town or city and use it to pay State Constables or else turn it into the County treasury. All moneys received by the County Dispenser belonging to the State shall be forwarded on Monday of each week to the State Treasurer, and at the same time the County Dispenser shall forward to the State Board of Control a duplicate statement of the remittance so made to the State Treasurer. On the same day of each week the County Dispenser shall deposit with the County Treasurer the portion of all the moneys received by him belonging to the County and to the municipal authorities in which the Dispensary is located. The County Treasurer shall give his receipt therefor, and hold the same until the quarterly settlement hereinbefore provided for is had. The quarterly settlements herein provided for shall be made on the fourth Monday in the months of March, June, September and December in each year. Such settlements shall be made in the presence of the County Auditor, who shall make a memorandum of the items thereof and

COPY BOUND CLOSE IN CENTER

A. D. 1896

forward the same to the State Board of Control. The Mayor or Intendant of the city or town in which the Dispensary is located may also attend such settlement: Provided, That in Counties where Dispensaries are established in other than incorporated cities or towns the County shall get all profits that would otherwise go to such cities and towns: Provided, That in the County of Barnwell the clerk of the Board of County Commissioners shall be the clerk of the Board of Control.

Requests for liquor, how made, and to whom refused.

Section 10. Before selling or delivering any intoxicating liquors to any person a request must be presented to the County Dispenser, printed or written in ink, dated of the true date, stating that he or she is of age and the residence of the signer, for whom or whose use it is required, the quantity and kind required and his or her true name; and the request shall be signed by the applicant in his own true name and signature, attested by the County Dispenser or his clerk who receives and files the requests. But the requests shall be refused if the County Dispenser filling it personally knows the person applying is a minor, that he is intoxicated, or that he is in the habit of using intoxicating liquors to an excess; or if the applicant is not so personally known to said County Dispenser, before filling said order or delivering said liquor he shall require the statement of a reliable and trustworthy person of good character and habits, known personally to him, that the applicant is not a minor and is not in the habit of using intoxicating liquors to excess.

Requests for liquor to be made on blanks furnished, &c.

Section 11. Requests for purchase of liquor shall be made upon blanks furnished by the County Auditor, in packages of one hundred each, to the County Dispenser, from time to time as the same shall be needed, and shall be numbered consecutively by the Auditor. The blanks aforesaid shall be furnished to the County Auditor by the State Board of Control, in uniform books like bank checks, and the date of delivery shall be endorsed by the County Auditor on each book and receipt taken therefor and preserved in his office. The Dispenser shall preserve the application in the original form consecutively by the Auditor. When return thereof is made the County Auditor shall endorse thereon the date of return, and file and preserve the same, to be

COPY BOUND CLOSE TO EDGE

used in the quarterly settlements between such Dispenser and the County Treasurer. All unused or mutilated blanks shall be returned or accounted for before other blanks are issued to such County Dispenser, A. D. 1896.

Returns by Dispenser, &c.

Section 12. On or before the tenth day of each month each Dispenser shall make full returns to the County Auditors of all requests filled by him and his clerks during preceding month, upon blanks to be furnished by the State Board of Control for that purpose, and accompany the same with an oath, duly taken and subscribed before the County Auditor or a Notary Public, which shall be in the following form, to wit: I, ————————, being duly sworn, state on oath that the request for liquors herewith returned are all that were received and filled at my place of business under my permit during the month of ————————, 189—; that I have carefully preserved the same, and that they were filled up, signed and attested at the date shown thereon, as provided by law; that said requests were filled by delivering the quantity and kind of liquors required, and that no liquors have been sold or dispensed under my permit during said month except as shown by the request herewith returned; and that I have faithfully observed and complied with the provisions of my bond and oath taken by me, thereon endorsed, and with all the laws relating to my duties in the premises.

Enforcement of returns in case of failure.

Section 13. Upon failure of any Dispenser to make returns to the Auditor as herein required, it shall be the duty of said Auditor to report such failure to the State Board of Control, and the said State Board of Control shall immediately order the County Board to summon said delinquent Dispenser to appear before them and show cause why his appointment should not be revoked; and if cause shall not be shown to the satisfaction of the County Board of Control, they shall immediately annul said appointment and give public notice thereof; and the Circuit Solicitor shall proceed to enforce the penalties prescribed in this Act for such violation against said County Dispenser at the next succeeding term of Court in the County in which such appointment is held; and any Dispenser who shall sell or dispose of any intoxicating liquors after his appointment shall have been revoked shall, upon conviction thereof, be fined not less than five hundred (500) dollars and be imprisoned

COPY BOUND CLOSE IN CENTER

A. D. 1896.

Penalty for illegal purchase, &c.

for six months. If any Dispenser or his clerk shall procure any intoxicating liquors from any other person except the State Commissioner, or if he, or they, or any person or persons in his or their employ, or by his or their direction, shall sell or offer for sale any liquors other than such as have been furnished by the State Commissioner, or shall adulterate, or cause to be adulterated, any intoxicating spirituous or malt liquors which he or they may keep for sale under this Act, by mixing with some coloring matter or any drug or ingredient whatever, or shall mix the same with other liquors of different kind or quality, or with water, or shall sell or expose for sale such liquors so adulterated, knowing it to be such, or shall change the label upon any box, bottle or package, he or they shall be guilty of a misdemeanor and be fined in a sum of not less than two hundred dollars or imprisoned for not less than six months. If any County Dispenser shall misappropriate, misuse or otherwise wrongfully dispose of any moneys or other property belonging to the State, County or municipality, he shall upon conviction be punished as in case of breach of trust with fraudulent intent.

Dispensers violating the law liable to damages.

Section 14. That any County Dispenser who, in violation of his oath of office, sells or furnishes intoxicating liquors to any minor, intoxicated person, or person who is in the habit of becoming intoxicated, or fails to make full and accurate returns as required by law, showing the true signature to every request for liquor by him received and granted, or sells liquors to any person without first requiring the written requests therefor to be filled out and signed as provided by law or the regulations of the State Board of Control, that on such information given by any person, with sufficient evidence, it shall be the duty of the Solicitor to bring suit in the name of the County for two hundred dollars' damages on the bond of the said County Dispenser against the principal and sureties of said bond for each of such violations, for which said principal and sureties shall be liable, jointly and severally, together with all cost and judgments pertaining to the suit. And on judgments given against him the said County Dispenser shall be immediately deprived of his office as Dispenser, and his principal and sureties aforesaid shall remain further liable, jointly and severally, to the extent of their bond, to all civil damag

COPY BOUND CLOSE TO EDGE

costs and judgments which may be obtained against the principal in any civil action brought by wife, child, parent, guardian, employee, or other person, under the provisions of the law: Provided, That if the said County Dispenser can show to the satisfaction of a jury by way of defense that the said intoxicating liquor was obtained from him by the infant, intoxicated person, or person in the habit of becoming intoxicated, by fraudulent and deceitful representations, the person making such fraudulent and deceitful representation, shall be guilty of a misdemeanor, and be fined in a sum of not less than two hundred dollars or imprisonment for not less than six months. A. D. 1896.

Section 15. No person, firm, association or corporation shall manufacture for sale, or keep for sale, exchange, barter, or dispense, any liquors containing alcohol, for any purpose whatsoever, otherwise than is provided in this Act. Any person, firm, association or corporation desiring or intending to manufacture or distill any liquors containing alcohol within this State shall first obtain from the State Board of Control a permit or license so to do: and it shall be unlawful for any such person, firm, association or corporation to manufacture or distill any liquors containing alcohol within this State without having such permit or license. Any violations of the terms of the permit or license shall authorize and warrant the seizure of the product on hand at any distillery or place where liquors containing alcohol are manufactured: Provided, The United States has no lien or claim upon the same. And in the application for a permit or license to manufacture liquors containing alcohol the applicant shall give the State full power upon any violation of this Act to seize and take possession of any product on hand at the distillery or place where such applicant shall manufacture such liquors, and shall authorize the State to pay the United States Government the tax upon the same if unpaid and to dispose thereof as provided herein for contraband goods. Every package, barrel or bottle of such liquors shipped beyond the limits of this State shall have thereon the certificate of the State Board of Control allowing same, otherwise it shall be liable to confiscation, and the railroad carrying it shall be punished as in Section three: And provided, That any person shall have the right to make wine for his or her own use from grapes or other Dispensers alone may sell.

COPY BOUND CLOSE IN CENTER

A. D. 1896.

fruits. The Inspector appointed by the State Board of Control, as herein provided, shall have the right to enter and examine, at any and all times not forbidden by the United States laws, any distillery, brewery or place where liquors containing alcohol is manufactured within this State. Any manufacturer, distiller or brewer who may refuse to allow the inspector or Constable to enter and examine his place of business and its appurtenances at such times as the Inspector or Constable may deem proper shall forfeit his permit or license.

Account book of Dispenser.

Section 16. Every Dispenser shall keep a strict account of all liquors received by him from the State Commissioner, in a book kept for that purpose, which shall be subject at all times to the inspection of the Circuit Solicitor, any peace officer or grand juror of the County, or of any other citizen, and such book shall show the amount and kind of liquors procured, the date of receipt and amount sold, and the amount on hand of each kind for each month. Such book shall be produced by the party keeping the same, to be used as evidence on trial of any prosecution against him on notice duly served that the same will be required as evidence.

U. S. Special tax, *prima facie* evidence of illegal sales.

Section 17. The payment of the United States special tax as a liquor seller, or notice of any kind in any place of resort, or in any store or shop, indicating that alcoholic liquors are there sold, kept or given away, shall be held to be prima facie evidence that the person or persons paying said tax and the parties displaying such notices are acting in violation of this Act, and unless said person or parties are selling under appointment as prescribed by this Act they shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment for a term of not less than three months nor more than twelve months. Conviction in the United States Courts of illicit sales of liquors shall be taken as prima facie evidence of violation of the provision of this Act, and any distiller or manufacturer of liquors containing alcohol so convicted in the United States Courts shall, by reason of such conviction forfeit the permit or license granted him by the State Board of control in addition to the other penalties herein provided.

COPY BOUND CLOSE TO EDGE

A. D. 1896.

Privileges to licensed druggists.

Section 18. Licensed druggists conducting drug stores d manufacturers of proprietary medicines are hereby au- orized to purchase of Dispensers of the Counties of their sidence intoxicating liquors (not including malt) for the rpose of compounding medicines, tinctures and extracts at cannot be used as a beverage. The Dispenser shall not arge licensed druggists more than ten per cent. net profits liquors so sold. Such purchaser shall keep a record of e uses to which the same are devoted, giving the kind and antity so used, and quarterly they shall make and file th the County Auditor and with the County Board of ntrol sworn reports, giving a full and true statement of quantity and kinds of such liquors purchased and used, e uses to which the same have been devoted, and giving name of the Dispenser from whom the same was pur- ased, and the dates and quantities so purchased, together h an invoice of each kind still in stock and kept for such mpoundings. If said licensed druggist shall sell, barter, e away or exchange, or in any manner dispose of, said uors for any purpose other than authorized by this Sec- n, he shall upon conviction forfeit his license and be lia- to all penalties, prosecutions and proceedings at law l in equity provided against persons selling without au- rity, and upon such conviction the Clerk of the Court ll, within ten days after such judgment or order, trans- to the Board of Pharmaceutical Examiners the certified ord thereof, upon receipt of which the said Board shall ke the name of the said druggist from the list of phar- cists and revoke his certificate: Provided, That nothing ein contained shall be construed to authorize the man- cture or sale of any preparation or compound under any ne, form or device, which may be used as a beverage ich is intoxicating in its character: And provided, fur- r, That the State Commissioner shall be authorized to to manufacturing chemists and wholesale druggists hol by the barrel at not exceeding ten per cent. above net cost.

False signatures, statements, &c; penalties.

ection 19. If any person shall make any false or ficti- s signature or sign any name other than his or her own ny paper required to be signed by this Act without be- authorized to do so, or make any false statement in any quest or application signed to procure liquor under

COPY BOUND CLOSE IN CENTER

A. D. 1896.

this Act, the person so offending shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than twenty-five dollars or be imprisoned not more than thirty days.

False oath & illegal act of Dispensers

Section 20. If any Dispenser or his clerk shall make false oath touching any matter required to be sworn to under the provisions of this Act, the person so offending shall, upon conviction, be punished as provided by law for perjury. If any County Dispenser shall procure any intoxicating liquors from any other person than the State Commissioner, or make any false return to the County Auditor, or use any request for liquors for more than one sale, in any such case he shall be deemed guilty of a misdemeanor and upon conviction be punished by a fine of five hundred dollars or six months' imprisonment.

Liquors at clubs prohibited.

Section 21. Every person who shall, directly or indirectly, keep or maintain by himself, or by associating or combining with others, or who shall in any manner aid, assist or abet in keeping or maintaining, any club room or other place in which any intoxicating liquors are received or kept for use, barter or sale as a beverage, or for distribution or division among the members of any club or association by any means whatever, and every person who shall receive, barter, sell, assist, or abet another in receiving, bartering or selling, any alcoholic liquors so received or kept, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment for a term of not less than three months nor more than twelve months: Provided, That the State Board of Control shall have the power, upon a proper showing, and under such rules as they may adopt, to exempt hotels where tourists or health-seekers resort from being considered nuisances or as violating this Act by reason of any manager of such hotels dispensing liquors bought from the Dispensary by the bottle, either night or day, but before any such exemption shall be granted the State Board of Control shall require the manager of such hotel to give a good and sufficient bond in the penal sum of three thousand dollars conditioned for the observance of all the rules, regulations and restrictions prescribed and imposed by the said

Provisions as to hotels.

COPY BOUND CLOSE TO EDGE

A. D. 1896.

Board and with all the requirements of this Act, and it shall be lawful for any Constable or officer thus employed under this Act to enter such hotel and search it for contraband liquors at any time, day or night, without a warrant.

Liquor resorts declared to be nuisances; arrest warrants seizures, &c.

Section 22. All places where alcoholic liquors are manufactured, sold, bartered or given away in violation of this Act, or where persons are permitted to resort for the purpose of drinking alcoholic liquors as a beverage, or where alcoholic liquors are kept for sale, barter or delivery in violation of this Act, are hereby declared to be common nuisances, and any person may go before any Magistrate in the County and swear out an arrest warrant on personal knowledge or on information and belief, charging said nuisance, giving the names of witnesses against the keeper or manager of such place and his aids and assistance, if any, and such Magistrate shall direct such arrest warrant either to the Sheriff of the County or to any special Constable, commanding said defendant to be arrested and brought before him to be dealt with according to law, and shall issue a search warrant in which the premises in question shall be particularly described, commanding such Sheriff or Constable to thoroughly search the premises in question and to seize all alcoholic liquors found thereon, and dispose of them as provided in Section 31, and to seize all vessels, bar fixtures, screens, bottles, glasses and appurtenances apparently used or suitable for use in retaining liquors, to make a complete inventory thereof, and deposit the same with the Sheriff. That under the arrest warrant the defendant shall be arrested and brought before such Magistrate, and the case shall be disposed of as in case of other crimes beyond his jurisdiction, except that when he commits or binds over the parties for trial to the next term of Court of General Sessions for the County he shall make out every paper in the case in duplicate and file one with the Clerk of the Court for the County, and immediately transmit the other to the Solicitor of the Circuit, whereupon said Solicitor shall at once apply to any circuit Judge at chambers within that Circuit, or to the nearest Circuit Judge if there be none in that Circuit, for an order restraining the defendants, their servants or agents, from keeping, receiving, bartering, selling or giving away any alcoholic liquors until the further order of the Court. Such Circuit Judge is hereby

Restraining order.

COPY BOUND CLOSE IN CENTER

A. D. 1896. authorized, empowered and required to grant the said restraining order without requiring a bond or undertaking upon the hearing or receipt by him of said papers from the Court of the said Magistrate by the hands of the Solicitor, and any violation of said restraining order before the trial of the case shall be deemed a contempt of Court and punished as such by said Judge or Court, or any other Circuit Judge, as for the violation of an order of injunction. Upon conviction of said defendants of maintaining said nuisance at the trial, they or any of them shall be deemed guilty of a misdemeanor, punishable by imprisonment in the County Jail for a term of not less than three months, or a fine of not less than two hundred dollars, or by both, in the discretion of the Court, and the restraining order shall be made perpetual. The articles covered by the inventory, which were retained by the Sheriff, shall be forfeited to the State and sold, and the net proceeds sent to the State Treasurer, and the Sheriff shall forthwith proceed to dispose of the alcoholic liquors covered by said inventory as provided for in this Act as when other liquors are seized. Liquors seized as hereinbefore provided, and the vessels containing them, shall not be taken from the custody of the officers in possession of the same by any writ of replevin or other process while the proceedings herein provided are pending. No suit shall lie for damages alleged to arise by seizure and detention of liquors under this Act. Any person violating the terms of any restraining order granted in such proceedings shall be punished for contempt by a fine of not less than two hundred dollars nor more than one thousand dollars, and by imprisonment not less than ninety days nor more than one year.

Violation of order to be contempt.

Punishment for contempt. In contempt proceedings arising out of the violation of any injunction granted under the provision of this Act, the Court, or in vacation any Judge thereof, shall have power to try summarily and punish the party or parties guilty, as required by law. The affidavits upon which the attachment for contempt issues shall make a prima facie case for the State. At the hearing upon the charge of contempt, evidence may be oral or in the form of affidavits, or both. The defendant shall not necessarily be discharged upon his denial of the fact stated in the moving papers. The Clerk of the Court shall, upon the application of either party, is-

COPY BOUND CLOSE TO EDGE

A. D. 1896.

subpœnas for witnesses, and, except as above set forth, the practice in such contempt proceedings shall conform as nearly as may to the practice in the Court of Common Pleas. That when any Solicitor neglects or refuses to perform any duty, or to take any steps required of him by any of the provisions of the preceding Section, or by any of the provisions of this Act, the Attorney General, on his own motion, or by request of the Governor, shall in person, or by his Assistant, proceed to the locality and perform such neglected duty, and take such steps as are necessary in the place of such Solicitor, and at his discretion to cause a prosecution to be instituted, not only in the matter so neglected, but also a prosecution against the Solicitor for malfeasance or misfeasance in office, or for official misconduct or for other charges justified by facts, and to pursue the prosecution to the extent of a conviction and dismissal from office of any such Solicitor.

Duty of Attorney General, when Solicitor neglects his duty.

And in such event the Attorney General shall be, and is hereby, authorized and empowered to appoint one or more additional assistants, who shall each have while actually employed the same compensation, to be paid from the litigation fund of the Attorney-General.

Any duty herein imposed upon a Solicitor may be performed with equal force and effect by the Attorney-General or other person authorized by him to perform such duty.

Section 23. The manager of every registered distillery of liquor in this State shall report quarterly to the State Board of Control, showing the number of gallons of each kind of liquor on hand, manufactured or disposed of during the quarter; and if the said report fail to correspond with the return of said distiller to the United States Revenue Collector of this State, or it is shown that said manager has disposed of liquor contrary to this Act, said distillery shall be deemed to be a common nuisance, and the said manager and his aiders and assistants and the premises shall be proceeded against as in this Act provided as to places where liquors are sold contrary to this Act.

Distillers to report quarterly to State Board.

Section 24. In all places where liquors are unlawfully kept or stored, the same not being in an open house or exposed to view, and a search being necessary, upon affidavit to that effect, or on information and belief that contraband liquor is in such place, a search warrant may be issued by a

Search warrant, by whom issued; disposition of liquor seized.

COPY BOUND CLOSE IN CENTER

A. D. 1896. Justice, Judge or Magistrate, or Mayor or Intendant of a city or town, to whom application is made, empowering a Constable, or any person who may be deputized, to enter the said place by day time, or in the night time, and to search and examine the said premises for the purpose of seizing the said contraband liquors therein concealed, kept or stored, which said liquor when so seized shall be disposed of as hereinafter provided,

When seizures may be made without warrant. Section 25. That any of the liquors set forth in Section one (1) of this Act, which are contraband, may be seized and taken *without warrant* by any Constable, Sheriff or policeman while in transit or after arrival, whether in possession of a common carrier, depot agent, express agent, private person, firm, corporation or association, and reported to the State Commissioner at once, who shall dispose of the same as hereinafter provided: Provided, That liquors purchased outside the State, owned and conveyed as personal baggage, shall be exempt from seizure when the quantity does not exceed one gallon.

Possession of illicit liquor prohibited: debt for void. Section 26. That the possession of said illicit liquors is hereby prohibited and declared unlawful, and any obligation, note of indebtedness, contracted in their sale or transportation is declared to be absolutely null and void, nor shall any action or suit for the recovery of the same be entertained in any Court in this State.

Proceedings in rem. Section 27. That the proceedings against liquor so illegally kept, stored, sold, delivered, elsewhere than at his or her residence, transported or being transported, shall be considered a proceeding in rem, unless otherwise herein provided.

Transportation or possession of falsely branded packages. Section 28. That the carriage, transportation, possession, removal, sale, delivery or acceptance of any of the said liquors or liquids in any package, cask, jug, box or other package, under any other than the proper name or brand known to the trade as designating the kind and quality of the contents of the casks, packages or boxes containing the same, or the causing of such carriage, transportation, possession, removal, sale, delivery or acceptance, shall work the forfeiture of said liquors or liquids and casks or packages, and the person or persons so offending, knowingly, be subject to pay a fine of not less than one hundred dollars nor more than five hundred dollars, or imprisonment

COPY BOUND CLOSE TO EDGE

the term of not less than six months nor less than one year and the wrongful name, address, mark, stamp or style on such liquor when seized shall be considered evidence prima facie of guilt. The books and way bills of the common carrier may be examined to trace said liquor to the shipper, who shall be liable upon conviction, in like penalty. A. D. 1893

Section 29. That all Constables, Deputy Constables, Sheriffs, Magistrates or municipal policemen shall have the right, power and authority, and it shall be their duty, whenever they are informed or suspect that any such suspicious package in possession of a common carrier contains alcoholic liquors or liquids, to detain the same for examination for the term of twenty-four hours without any warrant or process whatever. Any Constable, Deputy Constable, Sheriff or Magistrate who shall neglect or refuse to perform the duties required by this Act shall be subject to suspension by the Governor. Any Sheriff or Magistrate seizing any alcoholic liquors or liquids as required by this Section shall be paid one-half the value of said liquors or liquids so soon as the same shall have been received at the State Dispensary, approved and disposed of according to law. Powers of Constables to detain suspicious packages

Section 30. That any interference by any person with, obstruction or resistance of, or abusive language to, any officer or person in the discharge of the duties herein enjoined, or the use of abusive language by any such officer or person to any other person or persons, shall be deemed a misdemeanor, and the person or person so offending shall, upon conviction, be punished by a fine of not less than one hundred dollars, nor more than five hundred dollars, or imprisoned for a term not less than three months nor more than twelve months. Interference with officers forbidden.

Section 31. In all cases of seizure of any goods, wares, merchandise, or any other property, hereafter or heretofore made as being subject to forfeiture under any provisions of this Act or any former Act, which in the opinion of the officer or person making the seizure are of the appraised value of fifty dollars or more, the said officer or person shall proceed as follows: First, He shall cause a list containing a particular description of the goods, wares or merchandise seized to be prepared in duplicate and an appraisement thereof to be made by three sworn appraisers to be selected by him, who shall be respectable and disinterested citizens Proceedings when goods seized are of the value of $50 or more.

COPY BOUND CLOSE IN CENTER

A. D. 1897.

of the State of South Carolina residing within the County wherein the seizure was made. Said list and appraisement shall be properly attested by the said officer or person and the said appraisers, for which service each of the said appraisers shall be allowed the sum of one dollar per day, not exceeding five days, to be paid by the State Board of Control. Second. If the said goods are believed by the officer making the seizure to be of less value than fifty dollars, no appraisement shall be made. The said officer or person shall proceed to publish a notice for three weeks, in writing, at three places in the County where the seizure was made, describing the articles and stating the time and place and cause of their seizure, and requiring any person claiming them to appear and make such claim within thirty days from the date of the first publication of such notice. Third. That any person claiming the liquors or other property so seized as contraband within the time specified in the notice may file with the State Board of Control a claim, stating his interest in the articles seized, and may execute a bond to the State Board of Control in the penal sum of five hundred dollars, with sureties, to be approved by the said State Board of Control, conditioned that in the case of condemnation of the articles so seized the obligors shall pay all the costs and expenses of the proceedings to obtain such condemnation; and upon the delivery of such bonds to the State Board of Control he shall transmit the same with the duplicate list or description of the goods seized to the Solicitor of the Circuit in which such seizure was made, and the said Solicitor shall prosecute the case to secure the forfeiture of said contraband liquors or liquids in the Court having jurisdiction. Fourth. If no claim is interposed and no bond given within the time above specified, such liquors shall be forfeited without further proceedings, and the State Commissioner shall have the said liquors tested by the State Chemist, and *if pure* shall furnish the same *through the State Dispensary.* If not pure the same shall be destroyed by the Chemist of the South Carolina College, who shall make a report to the State Board of Control of the amount and kinds of liquors so destroyed: Provided, That in seizures in quantities less in value than fifty dollars of such illicit liquor, or liquors the same may be advertised with other quantities at Columbia by the State Board of

When of less value than $50

Duty of Solicitor.

COPY BOUND CLOSE TO EDGE

A. D. 1896.

Control, and disposed of as hereinbefore provided; Provided, further, That the claimants of such liquors may give bond in one hundred dollars as when the value is fifty dollars or over, and shall bear the burden of showing before a Magistrate that they have complied with the law and that the liquor is not liable to seizure.

When claimants may give bond.

Section 32. That all fermented, distilled or other liquors, or liquids containing alcohol, transported into this State, or remaining herein for use, sale, consumption, storage or other disposition, shall, upon introduction and arrival in this State, be subject to the operation and effect of this law to the same extent and in the same manner as though such liquors or liquids had been produced in this State.

Liquors on arrival in the State to be subject to its laws.

Section 33. That no person except as provided in this Act, shall bring into this State, or transport from place to place within this State, by wagon, cart or other vehicle, or by any other means or mode of carriage, any liquors or liquids containing alcohol, under a penalty of one hundred dollars or imprisonment for thirty days for each offense, upon conviction thereof, as for a misdemeanor. Any servant, agent or employee of any persons, corporations or associations doing business in this State as a common carrier, or any person whatever (except an officer seizing or examining the same), who shall remove any intoxicating liquors from any railroad car, vessel, or other vehicle of transportation at any place other than the usual and established stations, wharves, depots or places of business of such common carriers within some incorporated city or town where there is a Dispensary, or who shall aid in or consent to such removal, or attempt to remove, shall upon conviction be sentenced to pay a fine of not less than one hundred dollars nor more than five hundred dollars, or imprisonment for a term of not less than three months nor more than twelve months: Provided, That said penalty shall not apply to any liquor in transit when changed from car to car to facilitate transportation across the State. Provided, That this Section does not apply to liquors purchased from a Dispensary and bearing the proper label or certificate. All liquors in this State, except Dispensary liquors and those passing through this State, consigned to points beyond this State shall be deemed contraband, and may be seized in transit

Penalty for transporting liquors in vehicles, except as herein provided.

Liquors in transitu.

COPY BOUND CLOSE IN CENTER

A. D. 1896.

without warrant. And any steamboat, sailing vessel, railroad, express company or other common carrier transporting or bringing into this State, for sale or use therein, except by the Dispensary shall suffer a penalty of five hundred dollars and costs for each offense, to be recovered by the Solicitor of the Circuit or the Attorney General by an action brought therefor in any Court of competent jurisdiction. The State Constable, Sheriff, municipal police or any lawful Constable may enter any railroad car, or express car, or depot, or steamboat, or other vessel, without warrant, and make search for such contraband liquors, and may examine the way bills and freight books of said common carriers, and any one interfering with or resisting such officer shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or imprisonment for a term of not less than three months nor more than twelve months,

Officers may enter and search cars.

Section 34. That any person detected openly or in the act of violating any of the provisions of this Act shall be liable to arrest without warrant: Provided, A warrant shall be procured within a reasonable time thereafter.

Arrest of open violators.

Section 35. That in case of conviction of violations of any of the Sections of this Act where punishment is not especially provided for, the person or persons or corporations so convicted shall be punished in the discretion of the Court trying the same. All alcoholic liquors, other than domestic wine, which do not have on the packages in which they are contained the label and certificates going to show that they have been tested by the Chemist and purchased from a State officer authorized to sell them are hereby declared contraband, and on seizure will be forfeited to the State, as provided in Section 31: Provided, That this Section shall not apply to liquor held by the owners of registered stills in bonded warehouses. Persons having liquor which they wish to keep for their own use may throw the protection of the law around the same by furnishing an inventory of the quantity and kinds to the State Commissioner and applying for certificates to affix thereto.

Punishment for violation of forbidden acts.

Protection may be had for liquor stored.

Any persons affixing or causing to be affixed to any package containing alcoholic liquor any imitation stamp or other printed or engraved label or device than those furnished by

Imitation stamps prohibited.

COPY BOUND CLOSE TO EDGE

A. D. 1896.

the State Board of Control shall, for each offence, be liable to a penalty of ten days' imprisonment or twenty-five dollars' fine.

Rescue from officer.

Section 36. Every person who dispossesses or rescues from a Constable or other officer, or attempts so to do, any alcoholic liquor taken or detained by such officer charged with the enforcement of this law shall, upon conviction, be imprisoned not less than three months nor more than twelve months, or pay a fine of not less than one hundred dollars nor more than five hundred dollars.

Handling contraband liquor at night.

Section 37. Any person handling contraband liquor in the night time or delivering the same shall be guilty of a misdemeanor, and on conviction shall be punished by imprisonment for not less than three months nor more than twelve months, or by a fine of not less than one hundred dollars nor more than five hundred dollars.

Transportation by vehicles night.

Section 38. Any wagon, cart, boat, or any other conveyance together with horses, mules or other animal or animals and harness, accompanying the same, transporting liquors at night, other than regular passenger or freight steamers and railway cars, shall be liable to seizure and confiscation, and to that end the officer shall cause the same to be duly advertised and sold and the proceeds sent to the State Treasurer.

Labels to be cancelled by Dispenser.

Section 39. Every Dispenser when he sells a package containing liquor shall put a cross mark in ink on the label or certificate thereon extending from the top to the bottom and from side to side. When any liquor is seized because it has not the necessary certificates and labels required by this Act, the burden of proof shall be upon the claimant of said spirits to show that no fraud has been committed and that the whiskey is not contraband.

Common carriers liable to treble value of goods lost or stolen.

Section 40. That any railroad, steamboat, express company or other common carrier shall incur a penalty of treble the invoice price of any alcoholic liquors lost or stolen in transit to or from the Dispensary, whether shipped as released or not, such penalty to be recovered by action in any Court of competent jurisdiction.

Agency for sale of liquor prohibited; repealed Act March '97.

Section 41. That in shall be unlawful for any person to take or to solicit orders, or to receive money from other persons for the purchase or shipment of any alcoholic liquors for or to such other persons in this State, except for

COPY BOUND CLOSE IN CENTER

A. D. 1896.

liquors to be purchased and shipped from the Dispensar and any person violating this Section, upon conviction, sha be deemed guilty of a misdemeanor, and shall be punishe by imprisonment for a term of not less than three month nor more than twelve months, or by a fine of not less tha one hundred dollars nor more than five hundred dollars.

Officers to notify Solicitors, &c.

Section 42. It shall be the duty of Sheriffs, Deput Sheriffs and Constables having notice of the violation any of the provisions of this Act to notify the Circuit Solic tor of the fact of such violation, and to furnish him th name of any witness within their knowledge by whom suc violation can be proven. If any such officer or Solicito shall wilfully fail to comply with the provisions of thi Section, he shall, upon conviction, be fined in a sum not les than one hundred dollars nor more than five hundred dol lars, and such conviction shall work a forfeiture of th office held by such person, and the Court before whom such conviction is had shall, in addition to the imposition of th fine aforesaid, order and adjudge the forfeiture of his sai office.

Competent to charge divers sales on same or different days.

Section 43. That in any indictment for the sale of intoxi cating liquors it shall be competent to charge a series o sales on the same or on divers days up to the find ing of the true bill to one person, or to different persons naming one and stating the others to be unknown, in the same count, as was formerly the practice in indictments for retailing liquor without license in this State, and the prose cuting officer shall not be required to elect which particular sale he will rely on, but may offer proof of all, and proof of any one or all of the sales will sustain a verdict: Provided, Upon a trial and conviction or acquittal no other bill of indictment will lie for any sale occurring prior to bill found on the case tried, and that punishment shall be in such cases as for one sale: Provided, further, That this Section shall not be so construed as to prevent the prosecuting officer from giving out several bills of indictment for several sales in the first instance if he thinks best to do so.

Affidavits may be on information and belief.

Section 44. That whenever in this Act it is provided that process shall issue upon an affidavit based on information and belief, the affidavit shall contain a statement setting forth the sources of information, the facts and grounds of belief upon which the affiant bases his belief: Provided

COPY BOUND CLOSE TO EDGE

A. D. 1896.

That it shall not be necessary to set forth the sources of information, the facts and grounds of belief in the affidavit upon which a warrant of arrest shall issue, but it shall only be necessary in cases of *search warrants*.

Actions against officers acting under this law.

Section 45. That Chapter I, Title VII, of the Code of Civil Procedure of this State, entitled "Of Provisional Remedies in Civil Actions," shall not apply to *any officer* or person *having duties* to perform *under this Act*, and in no case shall an action lie against any such officer or person for damages to person or property, as provided in said Chapter.

Governor may appoint State Constables; pay of.

Section 46. The Governor shall have authority to appoint one or more State Constables at a salary of not more than two dollars per day and such expenses as the Governor may deem proper when on duty, and two Chief Constables at not more than three dollaas each per day and such expenses as the Governor may deem proper, and also one or more detectives at reasonable compensation, to see that this Act is enforced, the same to be paid from the Dispensary fund in the same manner as the salary of the State Commissioner.

A Public Act

Section 47. That this Act shall be a public Act and shall go into effect immediately upon its approval by the Governor, and that all Acts or parts of Acts inconsistent with this Act be, and are hereby, repealed.

State Board of Control goes into office.

Section 48. The State Board of Control elected under this Act shall not take charge until first of April, 1896.

Approved the sixth day of March, A. D. 1896.

COPY BOUND CLOSE IN CENTER

COPY BOUND CLOSE TO EDGE

No. 340. MARCH 5, 1897. A. D. 1897.

AN ACT to amend an Act entitled "An Act to provide for the election of a State Board of Control, and to further regulate the sale, use, consumption, transportation and disposition of intoxicating and alcoholic liquors or liquids in the State" and prescribed penalties for violation of the Dispensary Laws, and to police the same, approved March 6th, 1896, so as to regulate the importation of liquors for personal use. No 165.

SECTION 1. Be it enacted by the General Assembly of the State of South Carolina, That an Act entitled "An Act to provide for the election of the State Board of Control, and to further regulate the sale, use, consumption, transportation and disposition of intoxicating and alcoholic liquors or liquids in the State, and prescribe further penalties for violation of the Dispensary laws, and to police the same," approved March 6th, 1896, be amended as follows: In Section 1 strike out all of said Section after the word "offense" on line 22 of the printed Act and substitute therefor the following: All alcoholic liquors in this State, whether manufactured within this State or elsewhere, not having been tested by the chemist of the South Carolina College and found to be pure and free from poisonous, hurtful or deleterious matters, are hereby declared to be of a detrimental character, and their use and consumption are against the morals, good health and safety of the State and all such liquors may be seized wherever found, without a warrant, and disposed of as hereinafter provided. Any person resident in this State intending to import for personal use and consumption any spirituous, malt, vinous, fermented, brewed, or other liquor containing alcohol from any other State or foreign country shall first certify to the chemist of the South Carolina College the quantity and kind of liquor proposed to be imported, together with the name and place of business of the person, firm or corporation from whom it is desired to purchase, accompanying such certificate with a statement that the proposed consignor has been requested to forward a sample of such liquor to the said chemists at Columbia, South Carolina. Upon receipt of said sample the said chemist shall immediately proceed to test the same, and if found to be pure and free from all poisonous, hurtful or deleterious matter shall issue a certificate to that effect, stating therein the

Dispensary law amended. 1896 XXII.123.

COPY BOUND CLOSE IN CENTER

A. D. 1897. names of the proposed consignor and consignee and the quantity and kind of liquor proposed to be imported thereunder, which certificates shall be dated and forwarded by the said chemists post paid to the proposed consignor at his place of business. The said consignor shall cause such certificate to be attached to the package containing the liquor when it is shipped into this State, and no package bearing such certificate shall be liable to seizure and confiscation, but any package of spirituous, malt, vinous, fermented, brewed, or other liquor or liquid, containing alcohol imported into this State without such certificate, or any package containing liquor other than that described in the certificate thereto attached, or any package shipped by or to any person or persons not named in such certificate, shall be seized and confiscated as provided in this Act. Any certificate obtained from the chemist as herein provided shall be used within sixty days after the date of its issue, and shall be invalid thereafter. It shall be unlawful to use said certificate for more than one importation, and any person attempting to counterfeit said certificate or to make any improper use thereof, or who shall make any false statement in obtaining, or attempting to obtain, the same shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by imprisonment for not less than thirty days nor more than twelve months or pay a fine of not less than one hundred nor more than one thousand dollars. Any person or persons convicted of selling or otherwise unlawfully disposing of any liquor imported under the provisions of this Section shall suffer double the punishment provided for a sale in violation of other provisions of this Act. All expenses incurred in enforcing the provisions of this Section, including compensation for such assistant chemists as may be necessary to make prompt analyses, and the express charges on samples, shall be paid by the State Board of Control hereinafter provided for as an expense of the State Dispensary established by this Act. If the chemist of the South Carolina College shall willfully fail or refuse to make or have made an analysis of any sample sent to him in accordance with the provisions of this Section, he shall upon conviction thereof before a Court of competent jurisdiction, be fined one hundred dollars for each offense." So that said Section when amended will read:

COPY BOUND CLOSE TO EDGE

"Section 1. Be it enacted by the General Assembly of the State of South Carolina, That the manufacture, sale, barter or exchange, receipt or acceptance for unlawful use, delivery, storing and keeping in possession within this State of any spirituous, malt, vinous, fermented, brewed (whether lager or rice beer), or other liquors, any compound or mixture thereof, by whatever name called or known, which contains alcohol and is used as a beverage, except as is hereafter provided, is hereby prohibited under a penalty of not less than three nor more than twelve months at hard labor in the State Penitentiary, or pay a fine of not less than $100 nor more than $500, or both fine and imprisonment, in the discretion of the Court, for each offense. All alcoholic liquors in this State, whether manufactured within this State or elsewhere, not having been tested by the chemist of the South Carolina College and found to be pure and free from poisonous, hurtful and deleterious matters, are hereby declared to be of a detrimental character, and their use and consumption are against the morals, good health and safety of the State, and all such liquors may be seized wherever found, without a warrant, and disposed of as hereinafter provided. Any person resident in this State intending to import for personal use and consumption any spirituous, malt, vinous, fermented, brewed or other liquor containing alcohol from any other State or foreign country shall first certify to the chemist of the South Carolina College the quantity and kind of liquor proposed to be imported, together with the name and place of business of the person, firm or corporation from whom it is desired to purchase, accompanying such certificate with a statement that the proposed consignor has been requested to forward a sample of such liquor to the said chemist at Columbia, South Carolina. Upon receipt of said sample the said chemist shall immediately proceed to test the same, and if found to be pure and free from any poisonous, hurtful or deleterious matters he shall issue a certificate to that effect, stating therein the names of the proposed consignor and consignee, and the quantity and kind of liquor proposed to be imported thereunder, which certificate shall be dated and forwarded by the said chemist post paid to the proposed consignor at his place of business. The said consignor shall cause such certificate to be attached to the package

A. D. 1897.

The manufacture, sale or keeping of spirituous liquors prohibited except as herein provided.

Penalty for violation.

Liquors to be tested by chemist.

How liquors may be imported in State.

COPY BOUND CLOSE IN CENTER

A. D. 1897.

containing the liquor when it is shipped into the State, and no package bearing such certificate shall be liable to seizure and confiscation, but any package of spirituous, malt, vinous, fermented, brewed or other liquor or liquid containing alcohol imported into this State without such certificate, or any package containing liquor other than that described in the certificate thereto attached, or any package shipped by or to any person or persons not named in such certificate, shall be seized and confiscated as provided in this Act. Any certificate obtained from the chemist as herein provided shall be used within sixty days after the date of its issue and shall be invalid thereafter. It shall be unlawful to use said certificate for more than one importation, and any persons attempting to counterfeit said certificate or to make any improper use thereof, or who shall make any false statement in obtaining or attempting to obtain the same shall be deemed guilty of a misdemeanor and upon conviction shall be punished by imprisonment for not less than thirty days nor more than twelve months, or pay a fine of not less than one hundred nor more than one thousand dollars. Any person or persons convicted of selling or otherwise unlawfully disposing of any liquor imported under the provision of this Act shall suffer double the punishment provided for a sale in violation of other provisions of this Act. All expenses incurred in enforcing the provisions of this Section, including compensation for such assistant chemists as may be necessary to make prompt analysis and the express charges on samples, shall be paid by the State Board of Control hereinafter provided for as an expense of the State Dispensary established by this Act. If the chemist of the South Carolina College shall willfully fail or refuse to make or have made an analysis of any sample sent to him in accordance with the provisions of this Section he shall, upon conviction thereof before a Court of competent jurisdiction, be fined one hundred dollars for each offense."

Penalty for unlawful use of certificate.

Penalty for selling or disposing of liquor.

Amend Section 2 by striking out the word "use" on the 19th line of printed Act and substitute the word "sale" therefor after the word "lawful." So that the Section as amended will read:

Sec. 2 amended

"Section 2. A Board consisting of five members, to be known as the State Board of Control, shall be elected

State Board of Control.

COPY BOUND CLOSE TO EDGE

A. D. 1897.

the General Assembly at this session to carry out the provisions of this Act, the said Board to be composed of men not addicted to the use of intoxicating liquors. The terms of office of the Board so elected shall be for one, two, three, four and five years, respectively, and those elected shall determine by lot which shall take the respective terms. At the expiration of the term of office of each member, his successor shall be elected for a term of five years. They shall receive for their services the same per diem and mileage as members of the General Assembly. The State Board of Control shall devise and inaugurate such a system of bookkeeping and accounting as they may deem advisable, and shall elect a clerk or bookkeeper who shall hold his office during the pleasure of the Board and shall receive as compensation for his services a salary of $1,500 per annum. The State Board of Control, under such rules and regulations as may be adopted by said Board, shall purchase all liquors for lawful sale in this State, and shall have the same tested and declared to be pure as hereinbefore and hereinafter provided."

Sec. 3 amended.

Amend Section 3 by stricking out the word "use" on the 9th line of the printed Act and substitute the word "sale" therefor after the word "lawful." also amend by adding on the 27th line of the printed Act. after the word "pure," the words "and free from poisonous, hurtful and deleterious matter," also, amend by adding the words "sale and" on the 59th line, after the word "for." So that the Section as amended will read:

Election of Commissioner Term of office, duties of, etc.

"Section 3. That the State Board of Control shall at the expiration of the term of the present Commissioner and at the expiration of every two years thereafter appoint a Commissioner, which appointment shall be submitted to the Senate at its next session for its approval; said Commissioner shall be believed by the State Board of Control to be an abstainer from intoxicants, and shall, under such rules and regulations as may be made by the State Board of Control, furnish all intoxicating liquors for lawful sale in this State to such persons as may be designated as dispensers thereof, to be sold as hereafter prescribed in this Act. Said Commissioner shall reside and have his place of business in the City of Columbia in this State, and hold his office two years from his appointment and until another be

COPY BOUND CLOSE IN CENTER

A. D. 1897. appointed in his stead. He shall be subject to removal for cause by the State Board of Control. He shall qualify and be commissioned the same as other State officers and shall receive an annual salary of $2,500, payable from the Dispensary fund upon the warrant of the State Board of Control. He shall be allowed a bookkeeper, who shall be paid in the same manner a salary of $1,200, and such other assistants as, in the opinion of the Board of Control, may be deemed necessary. He shall not furnish to the County Dispensers any intoxicating or fermented liquors except such as have been tested by the chemist of the South Carolina College and declared to be pure and free from poisonous, hurtful and deleterious matters: *Provided*,, That said Board of Control shall have authority to appoint such assistants as they may find necessary to assist the chemist of the South Carolina College in making the analyses required by this Act; and the said Board of Control may fix such reasonable compensation, if any, as they may deem proper for the services rendered by such chemist or such assistants Each County Dispenser shall remit to the State Treasurer all moneys accruing to the State from the sale of liquors under such rules as may be prescribed by the State Board of Control, and the State Treasurer shall keep a separate account with said fund, from which the State Board of Control shall draw from time to time upon warrants. or in such manner as they may provide, the amount necessary to pay the expenses incurred in conducting the business. All rules and regulations governing the said Commissioner or County Dispenser in the performance of any of the duties of his office, where the same are not provided for by law, shall be prescribed by the State Board of Control. The State Commissioner shall, before entering upon the duties of his office execute a bond to the State Treasurer, with sufficient sureties, to be approved in the same manner as the bonds of other State officers, in the penal sum of $10,000, for the faithful performance of the duties of his office: *Provided*, That any officer of the State Dispensary or of the County Dispensary shall have the right to give either a personal bond or a bond in a guaraatee company, any rule or regulation to the contrary notwithstanding: *Provided*, The bond shall be approved as other official bonds are approved. In all purchases or sales of intoxicating liquors made as con-

COPY BOUND CLOSE TO EDGE

templated in this Act the State Board of Control shall cause a certificate to be attached to each and every package containing said liquors when the same is shipped to the State Commissioner from the place of purchase, or by State Commissioner to the County Dispensaries, certified by their official signatures and seal, which certificate shall state that liquors contained in said packages have been purchased by the State Board of Control for sale and use within the State of South Carolina, under the laws of said State, and shall also cause to be attached to all such liquors the certificate of the chemist of the South Carolina College that samples of the same have been tested as required by this Act; and without such certificates any package containing liquors which shall be shipped from place to place within this State, or delivered to the consignee by any railroad, express company or other common carriers, or be found in the possession of any common carrier, shall be regarded as contraband and may be seized without warrant for confiscation, and such common carrier shall be liable to a penalty of $500 for each offense, to be recovered against said common carrier in any Court of competent jurisdiction by summons and complaint, proceedings to be instituted by the Solicitor of any Circuit, with whom evidence may be lodged by any officer or citizen having knowledge or information of the violation; and any person attaching or using such certificate without the authority of the State Board of Control, or any counterfeit certificate for the purpose of securing the transportation of any intoxicating liquors within this State in violation of law, shall, upon conviction thereof, be punished by a fine of not less that $500 and imprisonment in the Penitentiary for not less than one year for each offense." A. D. 1897.

Amend by striking out Section 41 of the Act, and change the number of subsequent Sections in the Act, so that Section 42 will become Section 41 and the other Sections be numbered accordingly. Sec. 41 stricken out.

Approved the 5th day of March, A. D. 1897.

COPY BOUND CLOSE IN CENTER

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1897.

No. 514.

S. W. VANCE, W. N. BAHR, J. M. SCOTT, ET AL.,
APPELLANTS,

vs.

W. A. VANDERCOOK CO., APPELLEE.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA.

REPLY BRIEF FOR APPELLEE.

There are a number of positions taken in appellants' brief that it is proper to notice briefly.

I.

The position of the attorney general of South Carolina (pp. 13–15, Appellants' Brief) is that section 15 of the act of 1895, which directs that the State commissioner shall purchase his supplies from the brewers and distillers of this

State when their products reach the standard required by this act, provided they can be purchased as cheaply from the brewers and distillers in this State as elsewhere, contained in section 15 of the act of 1895 (printed in *Donald vs. Scott*, 165 U. S., 75, 92), and the further section 23 of the act of 1895, that the State commissioner may "enter into contracts with responsible grape-growers in this State, and sell domestic wines through the dispensary, so as to encourage grape-growing in this State, and in furtherance of this object not more than 10 per cent. profit to the dispensary, over the expenses of bottling, labeling, freighting, etc., shall be charged in the handling of such wines" (*Donald vs. Scott*, 165 U. S., 79, 80, 92, 93), has been repealed by the act of 1896 (pp. 1, 27, Appendix).

We submit, however, that there has been no such repeal. It is true that these provisions of the act of 1895 do not appear in the act of 1896, but they are, nevertheless, a part of the statute law of the State, for the act of 1896, by its title, is an act to "*further* regulate the sale, use, &c., of intoxicating liquors" (Appendix, p. 1), and the repealing clause of this act of 1896, to wit, section 47, only repeals "all acts or parts of acts inconsistent with this act" (p. 27, Appendix). Now, by reference to the act of 1896, section 3, "the State commissioner is to furnish all intoxicating liquors for lawful use in this State to such persons as may be designated as dispensers thereof, to be sold as hereafter prescribed in this act" (p. 3, Appendix), and in the act of 1897, section 3, "State commissioner shall furnish all intoxicating liquors for lawful sale in this State to such persons as may be designated as dispensers thereof, to be sold as hereafter prescribed in the act." (Appendix, p. 33, section 3.)

It thus appears that the person who, under the act of 1895 and 1897, was to furnish all intoxicating liquors for lawful sale in this State is a State commissioner.

The act of 1896 and 1897 is wholly silent as to where

and from whom shall be bought the intoxicating liquors to be sold by the State officers.

The act of 1895, we have seen, declares that it shall be bought "from the brewers and distilleries of this State if of the same standard, and as cheaply," and also provides for a special contract with grape-growers of the State to encourage grape-growing in the State. Neither of these provisions of the act of 1895 are *inconsistent* with the act of 1896 and 1897 and cannot be held a repeal by the act of 1896 and 1897, which by the title is only a *further* regulation and which only repeals acts and parts of acts inconsistent therewith.

The law of the State of South Carolina as to repeal is set forth very fully in the case of the *State vs. Branham*, 13 S. C., 394, where the court say:

"To have that effect (repeal), the new law must cover the whole subject exhaustively and be absolutely inconsistent with the old law. Acts upon the same subject which can stand together are construed *in pari materia*. If they are consistent, they both stand. If part is consistent and part not, the repeal only operates upon the inconsistent part." (State *vs.* Branham, 13 S. C., 394, and cases cited.)

The principle is affirmed in *State vs. Corley*, 13 S. C., 3:

"There must be such a positive repugnancy between the new law and the old that they cannot be reconciled."

The repealing words here, section 47 of the act of 1896, are limited to such acts and parts of other acts as are *inconsistent* with this act, and these provisions of the act of 1895 are still of force, as being in no way inconsistent. To the same effect are the decisions of the Supreme Court of the United States.

Chew Heong *vs.* United States, 112 U. S., 536, 549, 550, and cases cited.

CAREY BOUND CLOSE IN CENTER

Even if the act of 1896 and 1897 did repeal these special provisions of this act of 1895, such repeal only enlarged the capacity for discrimination by State commissioner. It only gave thereby unlimited power and authority to the State officer to make contracts with the South Carolina grape-growers for the encouragement of grape-growing in South Carolina on even more advantageous terms than 10 per cent., and even more to the disadvantage of the grape-growers of other States, and also gave an unlimited power for discrimination in the State officer in furnishing liquor for lawful sale. It has given him, indeed, in his absolute authority, the power to buy from State breweries and State distilleries, even when their products of equal standard are not as cheap as products of other States, to the exclusion of all competition of products of other States for sale within the State.

How this unlimited power is exercised is manifested by the uncontradicted testimony of R. R. Turner, representing the Vandercook Company (folio 90, Record), which is that for seven years, since the dispensary reign in South Carolina, neither under the act of 1895 nor 1896 nor 1897 have California wines from these five valleys ever been upon sale in the State dispensaries of South Carolina—that is, upon the facts before this court, here is a State policy of continuous perpetual exclusion by the State, and also a denial altogether of the opportunity of inspection and sale under equal regulations in the markets of the State, alongside of the products of the State, and such other products of other States as the State of South Carolina chooses to import for sale in her liquor shops throughout the State, and which she has been and is now *actually* selling by wholesale and by retail to all her citizens throughout the State.

II.

In reply to claim of the Attorney General that *Donald vs. Scott*, 165 U. S., 100, was decided upon two express discriminations in act of 1895, to wit, making a special rate of profit for local wines without fixing any rate of profit for foreign wines, and requiring State commissioner to buy beer and liquor of local brewers and distillers, when local product was as cheap and equaled others in quality, we answer:

The *fact* is, the *express* reason given by Supreme Court for its decision is not at all upon these points, which are minor, but upon the broad ground that under the dispensary law "liquor is lawfully made, bartered, and sold in South Carolina, and THEREFORE an article of *interstate commerce*, and not within the scope and operation of Wilson act, and for that reason must have protection of Federal court in that commerce like *any other article*."

This is the principle of the decision carefully formulated in the rubric, 165 U. S., 58, and also especially stated in the following passages, the broad principle and the reason therefor being asserted together *repeatedly*:

"*So long*, however, as State legislation continues to recognize wines, beer, and spirituous liquors as articles of lawful consumption and commerce, *so long* must continue *the duty* of the Federal courts to afford to such use and commerce the *same measure* of protection, under the Constitution and laws of the United States, as is given to *other articles*." (*Donald vs. Scott*, 165 U. S., 91.)

"In view of these and similar provisions, it is indisputable that, whatever else may be said of this act, it was not intended to prohibit the manufacture, sale, and use of intoxicating liquors. On the contrary, liquors and wines are recognized as commodities which may be lawfully made, bought, and sold, and *must*, THEREFORE, be deemed to be the subject of foreign and interstate commerce."

Idem, 93.

COPY BOUND CLOSE IN CENTER

"It is not a law purporting to forbid the importation, manufacture, and sale and use of intoxicating liquors as articles detrimental to the welfare of the State and to the health of the inhabitants, and HENCE it is not within the scope and operation of the act of Congress of August, 1890. That law was not intended to confer upon any State the power to discriminate injuriously against the products of other States in articles whose manufacture and use are not forbidden, and which are therefore the subjects of legitimate commerce."

Idem, 100.

"It is sufficient for the present cases to hold, as we do, that when a State recognizes the manufacture, sale, and use of intoxicating liquors as lawful, it *cannot discriminate* against the bringing of such articles in and *importing them from other States;* that such a legislation is void as a hindrance to *interstate* commerce and an unjust preference of the products of the enacting State as against similar products of the other States."

Idem, 101.

The present law, acts of 1896 and 1897, equally with the law of 1895, "does not purport to forbid the manufacture, sale, and use of liquor," and falls equally within the *same principle* declared by the court for the *same reason* also specially declared by the court.

III.

In answer to the statement of the Attorney General that under the dispensary law a citizen of South Carolina can get local and foreign wine both from the State dispensary and also import foreign wine for *personal use* from other States, and therefore discrimination is actually against local liquor! This is a mistake, because the fact is a citizen can get the local liquor in State dispensary, and if he could not import for his use foreign wine not sold in dispensary

it would discriminate against such foreign liquor. It is only partially putting the non-dispensary foreign wine on an equality to allow citizens to import for personal use. The full equality does not exist for California wine not sold in the State dispensary until the citizens of South Carolina can on the soil buy the non-dispensary imported wine (Vandercook & Co.'s California wines), as he can now buy within the State all dispensary local but only some imported wine—*i. e.*, only what the State board choose to import—and this denial of equality, in denial of equal provision and opportunity for inspection and *sale* within the State under equal regulations, is the very gist of the complaint of Vandercook & Co. in exclusion of their California wine products altogether from inspection and sale in the State.

IV.

In reply to the position of Attorney General that the dispensary system applies alike to citizens of all the States, including the people of South Carolina, the State enacting it, we say that the United States Supreme Court has said, "A *burden imposed on* INTERSTATE COMMERCE is not to be sustained simply because the statute imposing it applies alike to the people of all the States, including the people of the State enacting it."

Barber vs. Minnesota, 136 U. S., 313–326.

This reply was made by Supreme Court to the contention in that case that the inspection on the hoof (by analogy, our exclusive dispensary system), "as a condition of *selling* in the State, is applicable alike to all owners of such animals, whether citizens of Minnesota or citizens of other States."

Idem, 326.

COPY BOUND CLOSE IN CENTER

But the Supreme Court brushed it aside by asking what was the "natural operation" of the law—did it exclude any meats from other States, equally sound, that were offered for *sale* in Minnesota? And finding it did so exclude, and thus discriminate, they pronounced the whole system a burden on interstate commerce and null and void. This is our identical position, for under Donald *vs.* Scott, 100 U. S., pp. 91, 93, wine, being manufactured, bartered, and sold as a beverage, is in South Carolina now under dispensary law as legitimate an article of *interstate commerce* as beef, and cannot be discriminated against.

LAW BEARING EQUALLY ON CITIZENS.

The Attorney General on this point quotes from the opinion of the court below at page 18 of his brief, and makes this remark upon it:

"If we were dealing with some commodity other than intoxicating liquors, the case of *Minnesota vs. Barber* might have some reasonable application. It is true the court in that case said, 'A burden imposed by a State upon interstate commerce is not to be sustained simply because the statute imposing it applies alike to the people of all the States, including the people of the State enacting such statute.' In applying this to the case at bar, the circuit court evidently overlooked the Wilson act, the very purpose of which was to subject interstate and domestic commerce in liquors to the same restrictions."

To this we answer that the circuit court has applied this passage to answer the Attorney General's argument in the same way that the Supreme Court in *Donald vs. Scott*, 165 U. S., 98, applied this passage and the whole case of *Minnesota vs. Barber*, in its exact language, to answer the same argument made by the Attorney General then, and now repeated here, on the Wilson act. When the Attorney General contended before this court, in *Donald vs. Scott*, that

as a consumer in South Carolina could not, under the act of 1895, buy from the South Carolina producer or from the non-resident producer, but only from the State officer, *therefore* the State law did not discriminate, but equally affected the foreign product and the local product, and was therefore within the Wilson act, this court said no, quoting the identical passage used by the circuit court below and showed the discrimination operating against the products of other States, and the whole passage quoted by the court from *Minnesota vs. Barber* in this connection is at pages 96, 97, 98, *Donald vs. Scott*, 165 U. S., and is in these words, which it is proper to repeat here in this connection:

"In Minnesota *vs.* Barber, 136 U. S., 313, 326, 328, the *facts* so closely resemble those shown by the record now under consideration and the *principles stated in the opinion are so applicable* that we shall state them with some particularity." * * * When Minnesota urged that * * * "a condition of the privilege of *selling* or offering for sale, in the State, the meats taken from them, is applicable alike to all owners of such animals, whether *citizens of Minnesota or citizens of other States.* To this we answer that a statute may, upon its face, apply equally to the people of all the States, and yet be a regulation of interstate commerce which a State may not establish. A burden imposed by a State upon interstate commerce is not to be sustained simply because the statute imposing it applies alike to the people of all the States, including the people of the State enacting such statute."

Scott vs. Donald, 165 U. S., 96, 97, 98.

This is the language of this court used in direct reference, it will be seen, to the dispensary law of South Carolina and the Wilson act, and did not overlook the Wilson act which it was discussing, and applied the principle to its discussion as being a principle which must be borne in mind always.

The system in Minnesota of local regulation requiring inspection on the hoof within one hundred miles of the place of slaughter operated to exclude all other sound meats of

COPY BOUND CLOSE IN CENTER

other States, although it bore equally on the resident and non-resident. So in this case the local regulation that, under the act of 1895, all lawful liquor must be bought from the State officer, and under the act of 1896, 1897, that all liquor must be furnished for *sale* by a *State officer*, operates to exclude from sale and consumption within the State all other equally pure and wholesome wines. The local State regulation operating in the one case is identical with the local State regulation operating in the other case. They both exclude the products of other States by necessary operation and deprive the citizen of his right of selection according to *his taste* and judgment of lawful commodities (Donald *vs.* Scott, 100 U. S., 99). As the court said in *Brimmer vs. Rebman*, 138 U. S., 78, "the statute, though avowedly enacted to protect its people against the sale of unwholesome meats, has no real or substantial relation to such an object, but by its necessary operation is a regulation of commerce beyond the power of the State to establish."

V.

The very same argument that the Attorney General used in United States Supreme Court in the case of *Donald vs. Scott* to defend a denial of importation for use is now used to defend the denial of importation for sale.

It was (as now) said that the State law making all liquor not *sold* by or bought from a State officer contraband was in exercise of the police power, because under police power the State could forbid *use* of all liquor, and therefore could restrain or regulate in any way the *use* of liquor by its citizens, as it is now said the State can forbid *sale* of all wine; therefore can forbid sale of wine except by State functionaries; that the dispensary law by and through State functionaries furnished both domestic and some foreign liquor, and there was no discrimination against foreign liquors,

and consumer could not complain of any discrimination, because dispensary has operated equally on all products of all States and all citizens of this State and other States.

The Supreme Court held, however, that the dispensary law was an unlawful exercise of police power in discrimination against the products of other States, and an obstruction of interstate commerce, and said:

"The prohibition of the importation of the wines and liquors of other States by citizens of South Carolina for their own use is made absolute and does not depend on the purity or impurity of the articles. *Only State functionaries are permitted to import into the State*, and thus those citizens who wish to use foreign wines and liquors are deprived of the exercise of their own *judgment and taste* in selection of commodities."

Donald vs. Scott, 165 U. S., 99.

The State functionaries, *i. e.*, the monopoly of the State, according to their "taste and judgment," to import and *sell* all wine for sole use of citizens, was thus denied absolutely by the Supreme Court.

In the same way the monopoly of the State functionaries for import and *sale* and their power to prevent the inspection and sale of Vandercook's imported California wines under equal regulations to those same citizens, "entitled to the exercise of their own judgment and taste in selection of commodities" within the State (as well as without the State), is equally a discrimination against products of California; and these "State functionaries," claiming this exclusive power to import and sell all the wine for lawful sale, according "to their taste and judgment," are as much without the police power in one case as in the other.

Is it not discrimination against Vandercook's California products to force citizens of South Carolina, entitled to the "exercise of their own judgment and taste in selection of commodities," to go three thousand miles to California to make a contract of bargain and sale there before they can

COPY BOUND CLOSE IN CENTER

buy Vandercook wines, when within the State those "State functionaries" are offering to these same citizens domestic and other wines for sale *on the spot*, in South Carolina?

The very marrow of the question is this right of exercise of "taste and judgment" of the consumer in South Carolina. If the Supreme Court had allowed it to depend on "taste and judgment" of State functionaries, where the State dispensary law put it, Vandercook & Co. could not complain; but, depending on the "taste and judgment" of the citizen consumer of South Carolina, Vandercook & Co. have a right to equal opportunity of inspection and sale in the market of South Carolina to furnish that "taste and judgment" of the South Carolina consumer and not be discriminated against by the standard (pronounced unlawful by the Supreme Court) of the "taste and judgment" of State functionaries. This is not equal privilege, equal opportunity in interstate trade in a lawful article. This is the wide difference between "some imported liquor" and "*all* imported liquor." (*Donald vs. Scott*, 165 U. S., 100.)

The United States Supreme Court say we are entitled to inspection and sale for "*all* imported liquor." It means *all* that comes by importation, all that offers, all that chooses to come for inspection and sale, under equal regulations, to answer the "taste and judgment" of the citizen, which he has the right to exercise in the State.

The exclusive State system, however, is "*some* imported liquor," according to the "taste and judgment" of State functionaries, such only as they choose shall come!—an unlawful system, operating in *discrimination*.

VI.

The Attorney General of the State (p. 26, Appellants' Brief) claims that "it has never held that the right to import and sell, in consequence of importation, implies the right to store and offer for sale at a regular place of business" (p. 27, Appellants' Brief).

This is grave error. As we have shown in our brief, the right of importation as a right of interstate commerce implies the right of sale as an inseparable incident, if interstate commerce exist at all. Such was the express decision in *Lyng vs. Michigan* (135 U. S., 161, 162). In that case, under the agreed statement of facts, "Hagemeister & Son, citizens and brewers of Wisconsin, owned a *warehouse* in the State of Michigan, where they *stored* quantities of lager beer, so made by them at Green Bay, Wisconsin, and from there shipped to their said *warehouse* in said village of Iron River, Michigan, to be there *stored* and disposed of."

"4. The defendant, Henry Lyng, employed by Hagemeister & Son, as their agents, to look after their said *warehouse* and to take orders for and deliver said beer so manufactured and stored, and collect and remit the proceeds of sale thereof to Hagemeister & Son."

"5. The said Henry Lyng, in the course of his employment for Hagemeister & Son, did deliver from said warehouse to Martin Lilly said lager beer in the original packages in which it had been shipped." (Lyng *vs.* Michigan, 135 U. S., 162.)

On this state of facts this court held "that the right of importation of ardent spirits, distilled liquors, ale, and beer from one city to another includes by necessary implication the right of sale in original packages at the place where the importation terminates." (*Idem*, p. 166.)

And that "Lyng was merely a representative of the importers, and his conviction cannot be sustained in view of the conclusion at which we have arrived." (*Idem*, p. 167.)

COPY BOUND CLOSE IN CENTER

The same state of facts existed in the case of *Leisy vs. Hardin*, "where the original packages were offered for sale by John Leisy, a resident of Keokuk, Iowa, and agent of Gus Leisy & Co., of Peoria, Illinois, in kegs or cases which were not broken or opened on the premises; that as soon as the same was purchased it was removed from the premises occupied by Gus Leisy & Co., which said *premises were owned* by Christian Leisy, a member of the firm of Gus Leisy & Co., residing in and being a citizen of Peoria, Illinois." (*Leisy vs. Hardin*, 135 U. S., 101.)

On this state of facts the court held—

"Plaintiffs in error are citizens of Illinois and imported in Iowa beer, which they sell in original packages *as described.*"

"They had a right to import this beer into the State, and they had a right to sell it." (*Leisy vs. Hardin*, 135 U. S., 124.)

It thus appears that the appellants' contention that it has never been held that the right to import and sell in consequence of importation implies the right to *store* and offer for sale at the regular place of business is wholly mistaken as a statement of the law of interstate commerce, and expressly decided to the contrary by this court. The case of *Pittsburg Coal Co. vs. Bates*, 156 U. S., 588, and *Brown vs. Houston*, 114 U. S., 632, have to do solely with taxation of property brought into the State, and would apply to the case of *Lyng vs. Michigan* and *Leisy vs. Hardin* and make taxable goods so sold, but it would not prevent their sale alongside of and in competition with other like products of the State, or of any other State, which were actually being sold at the time and place.

Indeed, in *Brown vs. Houston* it was expressly said of this coal, "It was subjected to no discrimination in favor of the goods which were the products of Louisiana;" and that is the gist of the question here. All that the complainant has asked in this case is to store and warehouse in the State of

South Carolina and sell in the State of South Carolina, in original, unbroken packages, as imported, his California wines. (Page 8 of Bill, fol. 6, Record; Injunction, fols. 61, 81, 82.)

This warehousing, storing, and selling their California wines in original, unbroken packages is, we submit, only interstate commerce, heretofore particularly described and affirmed as lawful interstate commerce in terms by this court.

VII.

The Attorney General (p. 24, Appellant's Brief) announces and argues this proposition: "Sales of intoxicating liquor in quantities of *one-half pint* or a pint are not sales in original packages within the meaning of the laws of commerce."

We submit that this question is not an issue in this case under the pleadings of the bill and the answer, is not decided by the court below, and is not contained in any assignment of error by the defendant in the record. (See assignment of error, fol. 94–95, Record.)

The question of what is an original package within the meaning of the interstate-commerce law is not before this court on this record. For that reason we have not discussed it in our brief for appellee.

The Attorney General admits that when liquors are put up and packed in a *case*, and thus shipped to a State in such *case*, the case is the original package (p. 34, Appellants' Brief).

Now, if we turn to the schedule of the California wines, etc., which are the subject-matter of this suit, we will find that all of these packages are shipped by the car-load lot or half-car-load lot, and were all shipped in *cases* or kegs with their stamps and brands (fol. 12 to 16, Record); that the seventy-three packages were of the value of twelve hundred dollars (fol. 3, Record) and constituted a car-load, of the average value of over seventeen dollars a package.

COPY BOUND CLOSE IN CENTER

The record therefore shows only these *cases* and kegs of wine, all large packages of wine, as original imported packages in this case, and no question in the court below, either in the bill or answer, nor evidence or decree, has arisen as to what limitations, if any, should be put upon the size of an original imported package, and the argument of Attorney General admits these cases and kegs to be original packages.

Indeed, the only evidence in this record as to any sales of intoxicating liquor in packages of "*one-half pint* and upward" is the sales made by the State of South Carolina under the State dispensary law (section 4), by which the State commissioner shall put up his packages, for sale by the dispenser, of not less than *one-half pint, nor more than five gallons*, which packages shall be sold by the dispenser, and shall not be opened on the premises; and the further testimony in the case is that the United States Government has issued licenses for *wholesale* and *retail liquor dealers* to the State liquor dispensers throughout the State of South Carolina who have paid the usual license fees. (Fol. 91, Record.)

It appears, therefore, by this record that the State of South Carolina is doing a *wholesale and retail* liquor business in intoxicating liquors under the revenue laws of the United States, selling from one-half pint to five gallons, and flooding the whole State with intoxicating liquor, in her domestic and interstate commerce, and that the Vandercook Company is conducting only an interstate-commerce business, and is selling only its original, imported, unbroken packages of California wines in cases and kegs. No question of law arises here, except on the facts appearing in this record, and no error is there assigned which would bring before this court this question.

This question of what is an original imported package of wine was before the circuit court of the United States for the district of South Carolina, and was decided in the later case of *Guckenheimer et al. vs. Sellers*, 81 Fed. Rep., p. 997, in which

all the cases are reviewed, and that case, and others like it involving the same question, are now before the circuit court of appeals of the United States for the fourth circuit. It is not, however, made in this case, but concluded by the evidence and the admission of the Attorney General, that a case or keg of wine is an original package, and it is for that reason that we have not discussed it in our brief for appellee.

VIII.

The Attorney General in his brief mistakes our position. Our position is that in equality of lawful products *all* must have inspection and sale under equal regulation. Our wrong is that it is left to the State officer by the South Carolina State system to say whether any California wine shall be sold at all within the State of South Carolina and the State officer regulates interstate commerce in a lawful article. It is made a State privilege to import or not to import California wine for sale in original packages, and it depends upon the *ipse dixit* of the State officer whether or not the wine products of California shall at any time now or hereafter be sold and consumed in the State of South Carolina *while the citizens of the State are manufacturing, selling, and exporting to California and other States their local wines* in interstate trade and while the State is selling by retail and wholesale to all her citizens from one-half pint to five gallons of such liquor as she chooses in domestic and interstate commerce. This is our position: It is the constitutional right of equal privilege and opportunity of California wine as a lawful product to be inspected and sold in interstate trade in South Carolina under equal regulations alongside of and in competition with any wine whatsoever that is actually being there sold to consumers, that is denied altogether, and we are at the mercy of the State officer who chooses wine for sale in South Carolina, not on any fixed principle which protects our right, but wholly at his

COPY BOUND CLOSE IN CENTER

whim, pleasure, discretion, taste, or judgment. He may be influenced by feelings of sympathy for his own State and local industries, and have only South Carolina wine. He may be influenced by sectional feelings, and have only Southern wine. He may as a South Carolinian or a Southerner exclude any other wine, under his unlimited power to furnish all wine for sale. He may even be corrupted to put upon the markets of the State South Carolina wine or North Carolina wine and only such as pays him a corrupt toll. Whereas against this system of the absolute power, according to the whim, caprice, official taste and judgment, local bias, or possible corruption of a State officer, we claim as our certain security against discrimination the right to a fixed system of inspection and sale of our California wine alongside of and in competition with any other wine actually sold in South Carolina in interstate commerce, under the same system of inspection and equal regulations for such sale, wine being by her law a lawful product of the State of South Carolina, and there being manufactured, bartered, sold, exported, and imported and universally used as a beverage. This is our constitutional right under the principle declared by this court in *Scott vs. Donald*, 165 U. S., 100.

What would this court say if the State of Vermont should enact a law against butterine, declaring that no butter should be sold in domestic or interstate commerce in Vermont except by the State officer, and left it to the State officer to import and sell all butter products for local consumption under an inspection law? Would not that give to the State of Vermont the control of interstate trade in butter? Would not that give Vermont, through her official agent, an opportunity to exclude all butter products from other States and sell through her own official agent in Vermont only her own butter product for the benefit of her own dairy interests, and the prevention of competition from other dairies outside the State? Would the rights of producers in other States be remitted by this court to the dis-

cretion of a Vermont State officer that might exclude them altogether and regulate interstate commerce in her interest?

Suppose North Carolina were to take the same position as to tobacco and its adulteration. Would it not give her the opportunity to sell her products in her own interest in the same way as the State of South Carolina has sold and is now selling liquors in her interest, and claims by this act to say what wine under inspection should be sold within South Carolina, which is only a *power* to say that only her own wine should be sold in South Carolina? If this court sanctions this statute, which gives to the State commissioner the right to furnish *all* wine for *lawful sale* in South Carolina, then this court thereby has clothed such State commissioner with the power to say that only South Carolina wine shall be sold in South Carolina, and has left the whole subject simply to his local prejudice or bias, taste, judgment, whim, greed, or pleasure. It is simply and only a question of power. The Supreme Court foresaw how such a right unrestrained would be abused if the State had the power to exercise it for itself in selfish greed in furtherance of its own interests, for in *Brown vs. Maryland*, 12 Wheaton, 448, the court said:

"It will not meet this argument to say that this state of things will never be produced, and that the *good sense of the State is a sufficient security against it.* The Constitution has not confided this *subject to that good sense.* It is placed elsewhere. The question is, *Where does the power reside*, not *how far will it be probably abused?* The power claimed by the State is, in its nature, in conflict to that given to Congress, and the greater or less extent in which it may be exercised does not enter into the inquiry concerning its existence."

Brown *vs.* Maryland, 12 Wheaton, 447, 448, 449.

Our only protection therefore of our constitutional right of equality of lawful products is the "provision for inspection and sale of *all* imported and domestic liquor

COPY BOUND CLOSE IN CENTER

cision now presented in this case—*i. e.*, the right of equality in interstate trade of lawful products—as here, the right of a producer of California wine to import into the State of South Carolina his wine products in *original unbroken packages* and have the same *inspected* and *sold* under equal regulations in interstate commerce, the Wilson act not applying to exclude such wines because the State herself had made wine a lawful article of commerce by her own laws allowing its manufacture, sale, and use under inspection as a beverage and its import and export as an article of commerce. A reference to the cases quoted by appellants will show this.

In *Ex parte Gonzales* (*Donald vs. Scott*, 76 F. R., 554–559) both of these cases arose under *Donald vs. Scott* for violation of the injunction, which injunction only extended to the protection of the importer for personal use. Both cases came up by way of petition in the main case for violation of that injunction, and no other question did arise or could arise than whether the parties were importers for personal use in order to be within the protection of the injunction. The importer of original packages for sale was not within the terms of the injunction, and his rights had never been determined—had never been before the court or judicially passed upon in any way.

In the case of *Lowenstien vs. Evans*, 69 F. R., 908, the suit was brought under the act of Congress of July 2, 1890, for recovery of *statutory* penalty in restraint of interstate trade and monopoly. The suit was dismissed on the ground that the State is neither "a person nor a corporation" within the meaning of the act of Congress, and on that ground solely. This court distinctly says:

"Now, the question to be decided is not as to the constitutionality of this dispensary act, nor *whether it be within the lawful exercise of the police power*, but whether, in declaring and asserting this *monopoly in herself* and in assuming and controlling its enforcement, the State comes within the provisions of the act of Congress of July 2, 1890." * * *

"No opinion whatever is expressed as to the right of the plaintiff for violation of his common-law rights" (p. 911).

That question, then reserved by the court below, does, however, arise in this case, whether the act is a "lawful exercise of the police power" when it forbids the inspection and sale of the complainants' original imported packages from the vineyards of California, while the State is selling local products in its dispensary, and whatever other products of other States it may or may not choose to import; and our position is that this act is not a lawful exercise of the police power under *Donald vs. Scott*, but that under the South Carolina dispensary law, in the language of *Donald vs. Scott*, p. 93, "intoxicating liquor is an article of interstate commerce," and the duty of the Federal court is to protect it like *any other article* (p. 91), because it is manufactured, bartered, and sold within the State under the State dispensary law, and because ALL imported wine in original packages is entitled to have inspection and sale in the State, when it appears that there is sold in the State, by wholesale and retail, domestic liquor and *some* imported liquor in interstate commerce; and the court below found in *Lowenstein vs. Evans* that the dispensary act did create a monopoly in interstate trade of alcoholic liquors, and the object was to raise revenue and not prevent consumption of liquor, except that not owned by the State.

The circuit court agreed with the State court that it was for revenue.

"It was for the purpose of profit to the State and its governmental agency." (*McCullough vs. Brown*, 41 S. C., 220.)

It was not for morals, but for money; not for police, but for profit.

Under the principle of *Brenan vs. Titusville*, 153 U. S., 289, being an act for revenue, even though the State court might claim it to be the "exercise of the police power," it was distinctly void as an exercise of the police power.

See this case in full.

Also *Ex parte Leboit*, 77 F. R., 587–590.

See particularly page 590.

A license on representative of California Wine Association selling *in Chicago* its wines was held void, as a tax on interstate commerce, *i. e.*, for *revenue!*

In *Ex parte Loeb*, 72 F. R., 657, the question at issue was the legality of arrest of Loeb for violating section 41 of act of March 6, 1896 (*since repealed by act of March* 5, 1897; see Appendix, p. 35, appellee's brief), forbidding—

"Any person to take or solicit orders or to *receive money* from other persons for the purchase or shipment of any alcoholic liquors for or to such other persons in that State, except for liquors to be purchased for dispensary."

The circuit court held such act to be void, and that "soliciting preliminary" to importation was lawful. (*Idem*, p. 660.)

That case decided that particular question alone.

The circuit court did say also that the "State under its police power can control and regulate the liquor traffic either by prohibiting it altogether or by permitting its sale only on *certain prescribed conditions.* Nor can this power be controlled by any law of the United States," and "sale in this State is illegal and void."

This is a true statement of the general proposition of a State—control of *domestic commerce, provided* there is no *discrimination* in the operation of the law; in the same way as it is equally true that the police power of the State can prohibit *use* of liquor altogether or only under certain prescribed conditions. Nor can this power be controlled by any law of the United States, *provided* there is no discrimination against products of other States. The question here, however, is, "Is the State law a 'lawful exercise of the police power of the State' in forbidding *inspection and sale* of imported products that operates to *discriminate* injuriously against the products of other States?"

This question was not touched or decided by the circuit court in *Ex parte Loeb.*

The Supreme Court of the United States (Donald *vs.* Scott, 165 U. S., 100) denounced such a discriminating law as not a lawful exercise of the police power, and we have shown above the manifold discrimination to complainants' wine products, in the denial altogether of provision for its inspection and sale, and denial of its participation in regulations for inspection and sale, when these wines are entitled (Donald *vs.* Scott, 165 U. S., p. 100) to "equal regulation for inspection and *sale*" as a part of *all* imported liquor. (*Idem.*)

And the Supreme Court also held that a State dispensary system—*i. e.*, a law not forbidding manufacture, sale, and use of liquor—is not within scope of Wilson act (*Donald vs. Scott*, 165 U. S., p. 100), so that *right of sale* inhering in imported package, as a constituent part of *interstate* original *commerce*, became again operative.

The court below, in *Ex parte* Loeb, had neither of these questions before it and has never expressed any opinion on them, but distinctly reserved its opinion.

The *Beckroge vs. Harling* case (cited by counsel) was another case arising only on importation for use, and the circuit court declared from the bench that "it would not now decide the question of 'importation for sale' in original imported packages by producers of another State," as that question was not before them, but only one claiming the right of importation for personal use.

Indeed, the circuit court's *first* utterance in 1895 on this question recognized this *discrimination*:

"And further, in so far as this act permits the chief dispenser to purchase in other States alcoholic liquors and to import them into this State for the purpose of *selling* them for use and consumption at retail within the State, and forbids all other persons from so purchasing and importing for their individual use and consumption, it *discriminates* against all other citizens of the State. It *also* makes a DISCRIMINATION against all *persons in the trade in other States* who are not patronized by the State dispenser, *forbidding them to seek* CUSTOM WITHIN THE STATE, and to *enjoy a com-*

mercial intercourse secured to others IN THIS STATE. *These conclusions rest on this discrimination.* If it did not exist, and if all alcoholic liquors were excluded from the State, or if all persons were forbidden to import alcoholic liquors, or if the laws of South Carolina had declared that all alcoholic liquors were of such poisonous and detrimental character, and that their use and consumption as a beverage were against the morals, good health, and safety of the State, other and different questions would arise."

Donald *vs.* Scott, 67 F. R. (1895), 857.

* * * * * * *

It thus appears the circuit court has had only one view of this question since 1895, but has meanwhile *decided* only the particular case before it in its decisions.

J. P. K. BRYAN,

Counsel for Appellee, W. A. Vandercook Company.

No. 515.

Brief of Barber for P. & E.

...e Supreme Court U.
FILED
...
JAMES H. McKENNEY,
CLER

Filed Feb. 28, 1898.

BRIEF FOR APPELLANTS.

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1897.

No. 515.

S. W. VANCE, W. N. BAHR, AND J. M. SCOTT, PLAINTIFFS IN ERROR,

vs.

W. A. VANDERCOOK COMPANY.

In Error from the Circuit Court of the United States for the District of South Carolina.

BRIEF OF WILLIAM A. BARBER,
Attorney General of South Carolina,
Counsel for Appellants.

BRIEF FOR APPELLANTS.

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1897.

No. 515.

S. W. VANCE, W. N. BAHR, AND J. M. SCOTT, PLAINTIFFS IN ERROR,

vs.

W. A. VANDERCOOK COMPANY.

In Error from the Circuit Court of the United States for the District of South Carolina.

BRIEF OF WILLIAM A. BARBER,
Attorney General of South Carolina,
Counsel for Appellants.

STATEMENT OF THE CASE.

The W. A. Vandercook Company is a corporation created by and under the laws of California, and is a citizen of that State. In February, 1897, this company shipped from California to Charleston, S. C., by railroad, a number of cases of wines and brandies, consigned to J. C. Simonds, cashier of one of the national banks of that city, with each package marked "J. C. Simonds." After the arrival of the liquors in the city of Charleston, and while in the depot of the railroad company, they were seized by one of the defendants, but subsequently released. After delivery by the railroad company to J. C. Simonds, consignee, they were again seized by the defendants, as State constables, under the Dispensary Act. None of the liquors had been inspected,

COPY BOUND CLOSE IN CENTER

and did not have attached to the cases the certificates required by the Dispensary Law.

This action was commenced for the recovery of the possession of the wines and liquors so seized, and damages. In the answer of the defendants, several defenses are set up: 1st. That the Court has no jurisdiction. 2d. That the complainant does not state facts sufficient to constitute a cause of action. 3d. That, under the Dispensary Law, no action of this kind can be maintained. 4th. That there is a misjoinder of causes of action in the complaint. 5th. That the seizure was lawful under the Dispensary Act, and it is a lawful exercise of the police power.

At the trial of this cause, all of the said defenses were overruled, and the Court, without a jury, rendered a judgment for the plaintiff for the personal property or its value and the sum of $1,000.

A bill of exceptions was allowed, and the questions raised by it are:

I. That the Court has no jurisdiction in this action.

II. That the plaintiff in this action is not the real party in interest.

III. That by the provisions of the Dispensary Law of South Carolina, approved March 6, 1896, no action of this kind can be maintained against the defendants as State constables.

IV. That there is a misjoinder of causes of action in the complaint.

V. That the provisions of the Dispensary Law authorizing the seizure of the liquor of the plaintiff were enacted in the lawful exercise of the police power of the State.

VI. That the provisions of the Dispensary Law requiring an inspection of all liquors imported into South Carolina were enacted in the lawful exercise of the police power.

First Proposition.

The Circuit Court had no jurisdiction in this action. This is an action for the recovery of the possession of personal property and damages under the Code of South Carolina.

The complaint, in the twelfth paragraph, page 4, Transcript of Record, alleges the value of the property sued for to be one

thousand dollars. In the same paragraph it is alleged that by reason of the wrongs stated the plaintiff has been injured to his damage ten thousand dollars.

In the ninth paragraph of the complaint, page 4, it is alleged that "the said defendants, by reason of the said malicious trespass and wrongful detention aforesaid, &c." The damages claimed are predicated upon the malicious trespass committed, and not upon the detention of the property.

The first section of Act of Copgress of August 13, 1888, is as follows: "That the Circuit Courts of the United States shall have original cognizance, concurrent with the Courts of the several States, of all suits of a civil nature at common law or in equity, when the matter in dispute exceeds, exclusive of interest and costs, the sum or value of two thousand dollars, and arising under the Constitution and laws of the United States."

It is the well settled doctrine of this Court that the inquiry into the jurisdiction of the Circuit Court is limited to the facts appearing on the record in the first instance. In the complaint, it is alleged that the plaintiff has been damaged by the malicious trespass committed in seizing the liquors, and the prayer is for the recovery of the possession of the liquors or their value, and ten thousand dollars exemplary damages. Under the Code of South Carolina, an action for the recovery of the possession of personal property and for vindictive damages can not be sustained. Section 299 of Code of South Carolina is as follows: "In any action to recover the possession of personal property, judgment for the plaintiff may be for the possession, or for the recovery of the possession, or the value thereof, in case a delivery can not be had, and of damages for the detention. If the property has been delivered to the plaintiff, and the defendant claims a return thereof, judgment for the defendant may be for a return of the property or the value thereof, in case a return can not be had, and damages for taking and withholding same."

Section 298 is as follows: "Whenever damages are recoverable, the plaintiff may claim and recover, if he shows himself entitled thereto, any rate of damages which he might have heretofore recovered for the same cause of action."

COPY BOUND CLOSE IN CENTER

These sections have been considered and construed by the Supreme Court of South Carolina.

In *Joplin* v. *Carrier*, 11 S. C., 329, the Court held: "It is alleged that the judgment is erroneous, as it should have been for the return of the property, and that the value of the property should not have been included in the damages awarded, but assessed separably, so that the value would become part of the damages only in case the property was not returned. The plaintiff had a right to demand either damages for the taking and detention, as in trover for conversion, or the return of the property with damages. The Code has not changed the right of parties in this respect. The provisions of Section 301 (now 299) of the Code apply to a judgment awarding possession of personal property, not to a case where the plaintiff is entitled to general damages. It is for the plaintiff to elect which form of remedy he will pursue."

The same doctrine held in *Richey & Miller* v. *DuPre*, 20 S. C., 10.

Section 283 of Code of South Carolina is as follows: "In an action for the recovery of specific personal property, if the property have not been delivered to the plaintiff, or if it have, and the defendant, by his answer, claim a return thereof, the jury shall assess the value of the property, if their verdict be in favor of the plaintiff; or if they find in favor of the defendant, and that he is entitled to a return thereof; and may, at the same time, assess the damages, if any are claimed in the complaint or answer, which the prevailing party has sustained by reason of the detention or taking and withholding such property.

"In every action for the recovery of money only, or specific real property, the jury, in their discretion, may render a general or special verdict. In all other cases, the Court may direct the jury to find a special verdict, in writing, upon any or all of the issues; and in all cases may instruct them, if they render a general verdict, to find upon particular questions of fact, to be stated in writing, and may direct a written finding thereon. The special verdict or finding shall be filed with the Clerk and entered upon the minutes."

This section has been construed in the case of *Loeb* v. *Mann*,

39 S. C., 469. The Justice, delivering the opinion of the Court, said: "But it is urged that this action of 'claim and delivery' is peculiar in this, that the law expressly gives to the prevailing party damages in addition to costs and disbursements. It is true, that Section 283 of the Code provides as follows: 'In an action for the recovery of specific personal property, if the property have not been delivered to the plaintiff, or if it have, and the defendant, by his answer, claims a return thereof, the jury shall assess the value of the property, if their verdict be in favor of the plaintiff; or if they find in favor of the defendant, and that he is entitled to a return thereof; and may, at the same time, assess the damages, if any are claimed in the complaint or answer, which *the prevailing party has sustained by reason of the detention or taking and withholding such property*,' &c. What damages? Why, surely such damages as 'may have been sustained by reason of the seizure and detention of the property' itself; that is to say, by direct and proximate injury of the property in question, or in reducing its value, and not for the purpose of allowing a party to reimburse himself as to consequential losses alleged to have been sustained in the prosecution of the case, in respect to the speculative value of time lost, and the payment of the bills of railroads and hotels, lawyers' fees," &c.

In the case of *Sullivan* v. *Sullivan*, 20 S. C., 512, the Court held: "It is now urged that section 298 of the Code remands such cases to the former practice and limits the recovery of damages, as did the law before the new procedure. This position in the main is no doubt correct. The Code has made no material changes in the primary rights of parties, or in the causes of actions, nor has it given any new redress for wrongs perpetrated. It has only changed the mode by which such redress is reached and applied. The rights and remedies (using the term 'remedy' in the sense of 'redress') are still the same. But is the other position of appellant correct, to wit: That under the former in cases like this, the plaintiff could recover nothing except the notes, or, if they could not be delivered, then their amount and interest; so much so, as to demand that the Judge should have charged in this case that proposition as matter of law? The action below was an action for the recovery of personal property

COPY BOUND CLOSE IN CENTER

and damages for its detention. It was an action in the nature of the old action of trover. It will not be denied that in actions of that kind, under the former practice (as a general rule), damages for detention beyond the property itself could be and were uniformly recovered, such damages being measured by different rules, according to the character of the property and the circumstances of each case. See case of *McDowell* v. *Murdock*, 1 *Nott & McCord*, 237, where the Court said: "It has lately been determined by this Court in several cases, that a jury can not give vindictive damages in an action of trover. The value of the property, with such damages, as must necessarily be supposed to flow from the conversion, is the true measure. Such, for instance, as the work and labor of negroes; interest on the value of dead property." *Buford* v. *Fannen*, 1 *Bay* (2nd edit.), 273; *Harley* v. *Platts*, 6 Rich., 318; *Kid* v. *Mitchell*, 1 *Nott. & McCord*, 338.

In *Spellman* v. *Richmond & Danville R. R. Co.*, 35 S. C., 473, held: "Every cause of action is referable to a class and must be properly pleaded. And so, whether the damages claimed are actual or exemplary, must be stated in the complaint; and to the damages, as stated, the testimony must be confined and the jury restricted."

The damages alleged in the complaint are those arising from malicious trespass on the part of the defendants in seizing the property. No actual damages to the property are alleged or proved, and the damages stated arise consequentially, to wit: the destruction of the business of the plaintiff. This is essentially, then, an action for trover, in which the property converted is claimed and such damages as are recoverable in such actions. No damages are laid for the detention of the property, such as are recoverable under the Code. If general or exemplary damages are improperly laid, then the only amount to give jurisdiction appearing upon the face of the record, is the value of the property—one thousand dollars—which is insufficient under the Act of Congress, and the Court, therefore, it is respectfully submitted, was without jurisdiction.

Second Proposition.

It is submitted that there is a misjoinder of causes of action in the complaint, in this: that there is a cause of action for the recovery of the possession of personal property under the Code of South Carolina, and also a cause of action for general damages for the trespass committed in the seizure of the property.

See authorities as to jurisdiction, in which this question is considered.

Third Proposition.

The Dispensary Law of South Carolina, in so far as it prohibits the importation of liquors by non-resident manufacturers and dealers into the State for storing and sale, is a valid exercise of the police power.

In the case of *Donald* v. *Scott*, the only question for adjudication before the Court was the right of a citizen of South Carolina to import liquors within the State for his own personal use. The Dispensary Law was condemned in so far as its provisions prohibited this right, upon the ground of want of equality and uniformity in them. In the case at bar, the Circuit Judge has based his decision that a non-resident dealer or manufacturer has the right to import into the State and store for sale intoxicating liquors in original packages, upon the case of *Donald* v. *Scott*. In that case, the doctrine was enunciated that any statute of a State which prohibits the use of liquors as a beverage and allows the sale of same as such, or which prohibits the use and sale of anything but pure liquors, to be ascertained by analysis, provided for in a valid inspection law, was the lawful exercise of the police power, and came within the operation of the Wilson Act. The theory is, that since the passage of the Wilson Act, when the use and sale of liquors as a beverage are prohibited, it takes intoxicating liquors out of the category of commercial articles; or when only pure liquors are allowed to be used and sold as a beverage, it does not take liquor out of such category, but allows the State, in the exercise of police power, to regulate to this extent the use and sale of them after their arrival in the State. In the one case, the article being taken out of commerce, can not be brought into the State at all, while

COPY BOUND CLOSE IN CENTER

in the other, the article may be imported into the State as an article of commerce, but immediately upon its arrival becomes subject to the laws enacted in the exercise of the police power. The effect of the Wilson Act, then, is to add nothing to the police power of the States, but is simply an exercise of the commercial power by Congress, so far as intoxicatingl iquors are concerned, which either takes them out of the category of commercial articles or allows regulation of them, dependent upon the legislative action of the States, taken in the lawful exercise of the police power. If, then, a State does not prohibit the use and sale of liquors as a beverage, but regulates their use and sale upon arrival, the Wilson Act operates, provided there is no discrimination against the citizens and products of other States. But the theory of the Circuit Judge is that nothing but an Act prohibiting the use and sale of liquors as a beverage will fall within the domain of the police power and come within the Wilson Act. This is clearly in conflict with the doctrine held by this Court in *Donald* v. *Scott*. That there are no discriminations in the Dispensary Act of South Carolina against citizens or products of other States is manifest from an inspection of the Act. There is equality and uniformity in all of its provisions. So, then, the Wilson Act is operative and the provisions of the law prohibiting the importation of liquors into the State to be sold in original packages are a lawful exercise of the police power. To hold that only prohibition makes the Wilson Act operative is to give that Act a strained and narrow construction utterly at variance with its intended object. Such a construction renders it useless, as the experience of this country is that prohibition does not prohibit, and is tantamount to a proclamation that the sale of liquor may be free and untrammeled.

For authorities, see brief of argument in Equity case between these parties, No. 514.

BRYAN PTG. CO., COLUMBIA, S. C. 17630

No. 515.

MAR 5 189
JAMES H. McKENNEY
CL

BRIEF ON BEHALF OF DEFENDANT IN ERROR.

Brief of Bryan for D. E.

Supreme Court of the United States.

Filed Mar. 5, 1898.

OCTOBER TERM, 1897.

No. 515.

S. W. VANCE, W. S. BAHR AND J. M. SCOTT, ET AL, PLAINTIFFS IN ERROR,

vs.

W. A. VANDERCOOK CO., DEFENDANT IN ERROR.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA.

J. P. K. BRYAN.
Counsel for defendant in Error

Walker, Evans & Cogswell Co., Printers, Charleston, S. C.

BRIEF ON BEHALF OF DEFENDANT IN ERROR.

Supreme Court of the United States.

OCTOBER TERM, 1897.

No. 515.

S. W. VANCE, W. N. BAHR AND J. M. SCOTT, ET AL, PLAINTIFFS IN ERROR,

VS.

W. A. VANDERCOOK CO., DEFENDANT IN ERROR.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA.

J. P. K. BRYAN.
Counsel for defendant in Error

COPY BOUND CLOSE IN CENTER

STATEMENT OF THE CASE.

This is an action for recovery of personal property and damages, brought by the W. A. Vandercook Company, of the State of California, against S. W. Vance and others, claiming to act as officials and constables under the Act of the General Assembly of the State of South Carolina, generally known as the "State Liquor Dispensary." (Fol. 2 Record.)

The plaintiff is the proprietor of certain well-known vineyards in the State of California, known as the vineyards in the "San Gabriel, Santa Clara, Fresnos, Sonoma and Napa Valleys," and are producers from grapes of such vineyards of its well-known pure wines and brandies and other liquors, particularly of clarets, Rhine wines, Burgundies and champagnes. (Fol. 2 Record.)

The complaint further alleges that in February and March, 1897, the complainants in pursuance of certain orders of citizens and residents of Charleston, S. C., shipped from San Francisco, California, 26th March, 1897, by railroad, to ITS AGENT in the city of Charleston, S. C., one car load of such wines, products of complainant's said vineyards, containing seventy-three separate original packages, each marked W. A. Vandercook, Los Angelos, California," for each of said purchasers and customers, and also marked with specific brand of wine (as by schedule "A,") of the value of twelve hundred dollars. (Fol. 2, and 3 Record.)

That sixty-eight packages, schedule B and C, of value of one thousand dollars, were wrongfully seized at Charleston, S. C., on arrival at the railroad depot, *and delivery stopped*, by certain of defendants at Charleston, S. C., and were shipped to defendant, S. W. Vance, at Columbia, S. C., who claimed to act as State Commissioner under said State Liquor Dispensary Law of South Carolina, and detained, after repeated demands, said wines, and threatened to sell and convert the same. (Fol. 4 Record.)

The complaint further alleges that plaintiff is entitled to immediate possession of said packages, that the seizure was

COPY BOUND CLOSE IN CENTER

wrongful under color of the Dispensary Law of South Carolina of 1896 and 1897, which is alleged to be null and void and a restriction and regulation of commerce between the States. (Fol. 4, Record.)

Complaint further alleges repeated notice to defendants by plaintiff of the wrong-doing and demand for immediate return of said sixty packages of wine, but defendant refused to deliver same, and "do now detain same" wrongfully, wilfully-&c.

The complaint further alleged that by said seizure and *wrongful detention* of said sixty-eight packages of wine plaintiff has been greatly injured in its lawful trade with the citizens of South Carolina in the sum of ten thousand dollars. Fol. 6, Record.

EVIDENCE.

The evidence of R. R. Turner, on behalf of the complainants, is full in sustaining the allegation of the complaint as to orders of the citizens and residents of Charleston, S. C., for the wines of complainant's California vineyards, shipments from San Francisco to plaintiff's agent at Charleston, and seizure of same on arrival at Charleston, S. C., before delivery, and the notices and repeated warnings to defendants and their continued trespasses, notwithstanding, and damages to plaintiff "by such seizure and detention" in actual loss exceeds twelve hundred dollars; in addition to value of the property twelve hundred dollars. (Fol. 30-37. Record.)

And particularly he testified as follows:

"The plaintiff is a corporation created by and under the laws of the State of California, and are proprietors and owners of a number of vineyards in the State of California, known as "San Gabriel," "Santa Clara," "Fresna," and "Napa" Valleys, and producers of wines and brandies from the grapes," and also testified:

"Before, during and after these seizures intoxicating liquors *inter alia*, whiskey, beer, wine and brandy were being manufactured in the State of South Carolina. The distilleries, breweries, and vineyards were producing spirituous liquors, wine and beer within the State, and the same was used as a beverage in the State and sold within the State by State agents known as dispensers, at State liquor shops, known as dispensaries, under the provisions of the so-called State Liquor Dispensary Law, Acts 1896, 1897, and such liquor products of the State of South Carolina were being exported to other States by its citizens from the State. Some liquors, products of other States, were being imported by the State Board of Control from other States and sold by dispensers in broken packages and unbroken original packages. The imports consisted wholly of such products of other State or States as the Board of Control choose to import. *No products of the Vandercook California vineyards have ever been imported by the Board of Control or at any time offered for sale in the State Liquor Dispensaries in South Carolina.*"

"The United States Government has issued, upon application, licenses for wholesale and retail liquor dealers under the Revised Statutes of the United States, Sec. —, to the State liquor dispensaries throughout the State of South Carolina, and usual license fees have been paid by the State. (Fol. 37, Record.)

The testimony of *W. A. Vandercook*, *President* of Complainant Company, is also full to the allegations of the Bill, as follows:

"We have been and are willing to have the products of our vineyards inspected by the State of South Carolina under any lawful and reasonable system of inspection. The law of the State denies us inspection and sale of our goods in original packages in the State. There has been no demand upon us by any officer of the State for inspection of our goods sold in our agencies in original packages as imported into the State." (Fol. 38, Record.)

The answer of defendants set up Dispensary Law of South

COPY BOUND CLOSE IN CENTER

Carolina as legal justification, &c. Jury trial was waived and stipulation filed "that issues of fact be tried and determined "by the Court without a jury." (Fol. 23, Record.)

The Court found as matters of fact: "That the property "described in complaint is the property of the plaintiff, the "value thereof one thousand dollars, and that the damages "to plaintiff from the *detention* of the said property by the "defendants is the sum of one thousand dollars." Fol. 24, Record.

And as matter of law found and ordered plaintiff entitled to judgment against defendants for recovery of the possession of the property described in complaint or its value, one thousand dollars, and damages so found in the sum of one thousand dollars. Fol. 24, Record,

FIRST EXCEPTION.

That the Court has no Jurisdiction of the Subject-Matter of the Action.

By reference to the complaint it will be seen that this action is between the W. A. Vandercook Co., a California corporation, and defendants, citizens and residents of the State of South Carolina. Folio 2, record. And that the summons and complaint in this action were duly served upon the defendants. Folio 11-12.

It further appears by the record that the value of the sixty-eight packages of wine sued for was $1,000.00 and damages alleged for wrongful taking and detention, is ten thousand dollars.

It further appeared from the complaint that the rights of the plaintiff, which are alleged to be violated, are rights claimed under the Constitution of the United States, denied to the plaintiff under the alleged authority of an Act of the General Assembly of the State of South Carolina, approved

March 6, 1896, and amended March 5, 1897, known as the "Dispensary Law," which denied to the plaintiff commerce, intercourse and traffic with the citizens and residents of the State of South Carolina, in the products of the plaintiff's vineyards, situated in the State of California, which Act was alleged to be null and void and not an exercise of the police power of the State of South Carolina, but a restriction and regulation of commerce between the States and foreign nations, and in conflict with Article L, Sections 8 and 9 of the Constitution of the United States, and laws of Congress, made thereunder, and unconstitutional, null and void.

It appears therefore that the *subject matter* of this section brings it wholly within the jurisdiction of the Circuit Court of the United States.

First. As to the parties.

Second. As to amount involved.

Third. As to rights invoked by plaintiff under the Constitution and laws of the United States.

SECOND EXCEPTION.

That the Plaintiff in the Action is not the Real Party in interest.

It appears by the complaint that the complainants were the proprietors and owners of certain vineyards situated in State of California, and producers of wines, etc., from the grapes of said vineyards. That early in February and March of 1897 the plaintiff, by its travelling agent, took orders from the citizens of the State of South Carolina "to deliver to each of the same in "the City of Charleston" certain packages of wines, etc., then and there agreed upon and ordered by the said residents of the City of Charleston. Folio 2 of record, and thereupon, in pursuance thereof plaintiff shipped on the 20th day of March, 1897, from San Francisco, California, to *its agent* in the City of Charleston, one carload of wine, the wine for each of said customers of plaintiff in the City of Charleston, being in separate, original packages in said car. Folio 3, record.

COPY BOUND CLOSE IN CENTER

Plaintiff further alleges that the defendants wrongfully seized, without warrant, seventy-three packages at South Carolina railroad depot and *stopped delivery thereof* and carried away the same from said depot, Folio 3, and same came into the possession of Defendant Vance, claiming to act as State Commissioner.

The complaint therefore states a case of seizure of the goods sent to *agent* of plaintiff who was entitled to the possession before they reached the purchasers of plaintiff. The testimony of traveling agent sets forth with particularity this transaction which is as follows:

"In the months of February and March, 1897, as such traveling agent I took the orders of a number of residents of Charleston, South Carolina, for purchase of certain packages of wines and brandies, products of plaintiff's vineyards, set forth particularly in the complaint and exhibits, and in pursuance of such orders the W. A. Vandercook Co., on the 20th day of March, 1897, shipped the same for San Francisco, consigned to its *agent*, J. C. Simonds, Cashier First National Bank, at Charleston, South Carolina, in seventy-three separate original packages, each package to be delivered by its agent to person ordering same, and making a car-load lot of the value of twelve hundred dollars. This car-load of wines arrived in Charleston on 16th April, 1897, and while in depot of South Carolina and Georgia Railroad Company, at Charleston, were seized by defendants, W. N. Bahr and J. M. Scott, without warrant, and *delivery* of the same were stopped."

It appears therefore, that by the complaint and by the testimony, which was the only testimony upon the point in the record, that these packages were shipped by the plaintiff to its agent, (John Simonds, Cashier of First National Bank, at Charleston, S. C.,) and were to be delivered to the persons ordering the same by this agent, but delivery thereof was stopped.

The answer of the defendants expressly admits that John Simonds, Cashier of First National Bank, was the party to

whom the packages had been *consigned*. Testimony, therefore, is clear and conclusive upon the point that plaintiff was under contract to deliver these goods to certain consumers, and that the goods were seized on the way to the plaintiff's agent for the purpose of such delivery.

We submit that under the law the Circuit Judge could not find that the plaintiffs were not the real parties in interest. The Bill of Lading, it appears, was by the plaintiff to the order of its own agent, John Simonds, Cashier of National Bank, the right of possession of goods was in John Simonds, Cashier First National Bank, as its agent and the goods were not to be delivered to the person ordering them until the same were paid for, for so the answer expressly states. Folio 20, record.

The plaintiff had not delivered the goods to consumers who ordered them, but only to *its agent*, by Bill of Lading to his order, for purpose of such delivery on payment of money.

Both title and possession was in plaintiff and his agent at time of seizure. The *real party* in interest is and can only be the plaintiff.

Moreover, the Circuit Court has found "the property described in the complaint is the property of the plaintiff," folio 24, Record, and this is a finding of fact on the evidence, and is conclusive as to the question of law as is the "real party" in interest; for by the fact found by the Court the plaintiff alone can be the "real party" in interest.

Such is the effect of the finding of the Circuit Court under the repeated decisions of this Court.

"There is no special finding of facts, and no agreed statement of facts. Obviously, therefore, inquiry in this Court must be limited to the sufficiency of the complaint and the rulings, if any be preserved, on questions of law arising during the trial. Sections 648 and 649 of the Revised Statutes, while committing generally the trial of issues of fact to a jury, authorize parties to waive a jury and submit such trial to the

COPY BOUND CLOSE IN CENTER

Court, adding that "the finding of the Court upon the facts, which may be either general or special, shall have the same effect as the verdict of a jury." But the verdict of a jury settles all questions of fact. As said by Mr. Justice Blatchford, in Lancaster vs. Collins, 115 U. S., 222, 225: "This Court cannot review the weight of the evidence, and can look into it only to see whether there was error in not directing a verdict for the plaintiff on the question of variance, or because there was no evidence to sustain the verdict rendered." The finding of the Court, to have the same effect, must be equally conclusive and equally remove from examination in this Court the testimony given on the trial. Insurance Co. vs. Folsom, 18 Wall, 237; Cooper vs. Omohundro, 19 Wall. 65. Further, Section 700 provides that "when on issue of fact in any civil cause in a Circuit Court is tried and determined by the Court without the intervention of a jury according to section six hundred and forty-nine, the rulings of the Court in the progress of the trial of the cause, if excepted to at the time, and duly presented by a bill of exceptions, may be reviewed by the Supreme Court upon a writ of error or upon appeal; and when the finding is special the review may extend to the sufficiency of the facts found to support the judgment; but if there be no special findings, there can be no inquiry as to whether the judgment is thus supported. We must accept the general finding as conclusive upon all matters of fact, precisely as the verdict of a jury.

Martinton vs. Fairbanks, 112 U. S., 670.

Lehnen vs. Dickson, 148 U. S., 72–73.

THIRD EXCEPTION.

That by the provisions of the Dispensary Law of South Carolina, approved March 5, 1896, no action of this kind can be maintained against the defendants, who are State constables and State officers and charged with duties under the law.

It is sufficient, to dispose of this exception, to say that the defendants, S. W. Vance, J. M. Scott and W. N. Bahr, are not sued in their capacity as State officers and State constables, as to the doing any duty wherewith they are charged under the

law. It is true that by the Dispensary Law of the State of South Carolina, Act of March 6, 1896, Section 45, no action for damages can be maintained against a State constable or officer for the discharge of duties of said Act, but this action is brought against these defendants as *individuals*, their defence consisting in pleading this law as justification of their action in their answer; but the State law is no justification when it is declared to be unconstitutional, null and void, in so far as it authorizes a seizure of the products of other States in the course of inter-state commerce with the citizens of the State of South Carolina.

Donald vs. Scott, 165 U. S., 58.

FOURTH EXCEPTION.

That there is a misjoinder of cause of action in that the plaintiff sues for the recovery of the possession of personal property, and also for exemplary damages for the commission of a trespass in taking the same.

It is clear that the complaint is a case for recovery of personal property and for damages for its detention. The allegations in the complaint as to the wrongful taking of the property are not by way of stating a cause of action for malicious trespass, but, under the law of the State of South Carolina are necessary as allegations of wrongful seizure, wrongful taking, and support an action for recovery of personal property, and damages for detention without a previous demand before the suit, and Court, by its judgment, so construed the complaint and gave judgment in conformity to the Code.

In the case of *Burchhalter vs. Mitchell, 27 S. C. 240*, the Court held that one who is in possession cannot be mulcted in damages until some demand is made upon him by the rightful owner to surrender possession; where however, one acquires possession *wrongfully* and with notice of another's claim, then no demand is necessary, for his wrong in that case begins with its possession. *Idem 243.*

It was, therefore, necessary to allege in this complaint that

COPY BOUND CLOSE IN CENTER

the defendants acquired possession wrongfully to relieve the plaintiff of the necessity of demand for delivery previous to the commencement of the suit.

All the allegations, therefore, of the *wrongful* taking, wrongful seizing, are under the law of the State of South Carolina equal to a demand for delivery of possession of the specific property previous to suit brought. In other words they are allegations which show that the defendants' wrong began with their possession by a wrongful taking.

In this light the case is not one of damages for malicious trespass, but damages for detention after a wrongful taking and after a notice of the same.

The same doctrine was announced by the Supreme Court of South Carolina in the case of *Ladson vs. Mostowitz*, 45 S. C., 388, which distinctly holds that an allegation of demand and refusal is essential to a complaint for claim and delivery of personal property against a buyer in good faith, but, on the other hand, holds that an allegation of demand and refusal is not necessary against the defendant who took the chattel wrongfully with notice of a plaintiff's title.

This is exactly the case here. The allegations of the complaint are, that the defendants took these chattels wrongfully unlawfully and maliciously. And even if there might be no demand and refusal of delivery by the defendants to restore possession before suit, such demand and refusal is not necessary where the possession of the defendants commences, as alleged here, in a wrong. At page 392, *Ladson vs. Mostowitz*, the Court thus sums up the whole question :

" When, however, one acquires possession wrongfully, and with notice of another's claim, then no demand is necessary, for his wrong in that case begins with his possession." So that in this case, the allegation being made in the complaint that the defendant, Mostowitz, " wrongfully took said mare and colt from the possession of these plaintiffs," there was no necessity to allege any demand upon *him* ; but there being no allegation that the defendant, White, had done any *wrongful act*, or even had any notice of plaintiff's claim prior to the

commencement of this action, a demand upon *him*, and a refusal to comply with such demand, was necessary to give the plaintiffs any cause of action against him; for, it may be, from all that appears, that he would have complied with such demand."

Moreover, there can be no possible harm done defendants here by this construction of the complaint by the Circuit Judge, for the Circuit Judge has treated complaint as an ordinary action for recovery of personal property and for damages for its detention, and has found the title of the property in the plaintiff, and has found the *damages for detention*. He has found no other damages, he has found no damages for malicious taking, he has found no damages for malicious trespass, he has found only "*damages for detention*." And those damages as matter of fact, were testified to as being at least twelve hundred dollars. The Circuit Judge has found them to be one thousand dollars, and they are conclusive as matters of fact, and are the usual damages accompanying the successful plaintiff who recovers judgment against the defendants for recovery of possession of personal property and damages incident to wrongful detention. The defendants, therefore, have no possible cause of complaint.

The contention that there is a misjoinder of cause of action in this case is due to the lack of clear apprehension of the law in the State of South Carolina relating to recovery or possession of personal property and damages for its detention.

Not only are damages recoverable in addition to the recovery of specific personal property, but the Code of Civil Procedure, Sec. 232, South Carolina, provides in fixing the bond to be given by the defendant for the return of the property, as follows:

"A written undertaking executed by two or more sufficient sureties, to the effect that they are bound in double the value of the property, as stated in the affidavit, of the plaintiff for the delivery thereof to the plaintiff, if such delivery be adjudged, and for the payment to him of such sum as may for *any cause* be recovered against the defendant."

COPY BOUND CLOSE IN CENTER

The Code of Procedure also provides, Sec. 298, as follows:

"Whenever damages are recoverable the plaintiff may claim and recover, if he show himself entitled thereto, any rate of damages which he might have heretofore recovered for the same cause of action."

"And in *Levi vs. Legg*, *23 S. C.*, *282*, the Supreme Court of South Carolina held that in the recovery of personal property damages were incident to the violation of plaintiff's rights."

Again the formal judgment in the case of specific personal property is stated in Section 299 of the Code.—P. 132.

"In any action to recover the possession of personal property judgment for the plaintiff may be for the possession, or the value thereof, in case a delivery cannot be had, and of *damages for the detention*."

And it will be noted that the Circuit Court in giving judgment distinctly found that as a matter of fact "That the property described in the complaint is the property of the plaintiff, and that the value thereof is the sum of one thousand dollars, and that the damages to the plaintiff from *the detention* of the said property by the defendants is the sum of one thousand dollars." (Fol. 24, Record.)

"As a matter of law, the Court finds that the plaintiff is entitled to judgment against the defendants for the recovery of the possession of the said property described in the complaint, or the sum of one thousand dollars, value of said property, in case delivery thereof cannot be had, and for further sum of one thousand dollars damages." (Fol. 24, Record.)

It thus appears that the Circuit Judge found the damages to the plaintiff from the *detention of said property* by the defendant to be the sum of one thousand dollars, as a finding of fact, and the judgment is in the exact language of the Civil Code of Procedure of South Carolina, that is damages for detention.

It also appears that the formal judgment entered up of

record in the Court below is for damages to the plaintiff by *reason of detention* of said property by the defendants in the sum of one thousand dollars, fol. (27, Record.) Judgment for damages is for one thousand dollars, damages so found. (Fol. 28, Record.)

It appears, therefore, from review of Record that the damages found by the Court and entered up in the judgment have the express sanction of the principle settled in the law of the State of South Carolina and conformed to the actual form prescribed by the Code of Procedure in such cases. There was no request to Court limiting the nature of damages for detention; nor was there any motion for new trial for excessive damages in Court below.

FIFTH EXCEPTION.

That the Act of General Assembly of the State of South Carolina approved March 6, 1896, and as amended March 5, 1897, generally known as the Dispensary Law, is not in conflict with Article 9 of the Constitution of the United States and is a lawful exercise of the police power of the State in prohibiting the importation by the plaintiff into the State of South Carolina of all intoxicating liquors, products of other States and foreign countries, for storing and sale in South Carolina, and in authorizing a seizure of such intoxicating liquors so imported into the State by plaintiff or any other person.

SIXTH EXCEPTION.

That the provisions of the said Act are not in conflict with Article 9 of the Constitution of the United States, and is a valid exercise of the police power of the State in prohibiting the importation of liquor into the State without an inspection of the same, as required by Act of 1896, as amended by Act of 1897.

SEVENTH EXCEPTION.

That the provisions of the said Act prohibiting the importation of liquors into this State for sale is not a

COPY BOUND CLOSE IN CENTER

valid exercise of the police power of the State within the provisions of the Act of Congress of 1890, known as the "Wilson Act."

We submit this question on these three exceptions, 5, 6 and 7, on our argument and brief on behalf of appellee, W. A. Vandercook Co. in the equity case No, 514, October term 1897, entitled "S. W. Vance, *et al.*, appellants, vs, W. A. Vandercook Co., appellees.

Writ of error must be dismissed because requests and exceptions are general.

There is moreover a final objection to the maintenance of this appeal on the errors alleged in Bill of Exception, because it appears that all of the seven requests to the Court of plaintiff in error, were asked as a whole, and the exception was taken to the refusal of the Court to grant the series of seven legal propositions as a whole. No request was asked separately and the refusal to hold as requested was not excepted to separately by plaintiff in error. (Folio 40–41, Record.)

A refusal of a general request to hold and find as matters of law a series of propositions as a whole is not error; and a general exception to a refusal to grant a series of legal propositions, as a whole is bad, if any one of the series be objectionable.

Union Insurance Company vs. Smith, 124 U. S., 405.
Anthony vs. Louisville Railroad, 132 U. S., 172.

This writ of error must be dismissed, therefore, if any of these seven requests asked as a whole, refused as a whole, and refusal excepted to generally, is objectionable.

J. P. K. BRYAN,
Counsel for W. A. Vandercook Co., Defendant in Error.

NOTE.—Appellee's brief in No. 514, *S. W. Vance, et al, vs. W. A. Vandercook Co., Appellee,* is also submitted on the question of the Constitutionality of the South Carolina Dispensary Law, raised in Exceptions five, six and seven, above.

VANCE *v.* W. A. VANDERCOOK COMPANY (No. 1).

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA.

No. 514. Argued March 9, 10, 1898. — Decided May 9, 1898.

It is settled by previous adjudications of this court:

(1) That the respective States have plenary power to regulate the sale of intoxicating liquors within their borders, and the scope and extent of such regulations depend solely on the judgment of the lawmaking power of the States, provided always, they do not transcend the limits of state authority by invading rights which are secured by the Constitution of the United States, and provided further, that the regulations as adopted do not operate a discrimination against the rights of residents or citizens of other States of the Union;

(2) That the right to send liquors from one State into another, and the act of sending the same, is interstate commerce, the regulation whereof has been committed by the Constitution of the United States to Congress, and, hence, that a state law which denies such a right, or substantially interferes with or hampers the same, is in conflict with the Constitution of the United States;

(3) That the power to ship merchandise from one State into another carries with it, as an incident, the right in the receiver of the goods to sell them in the original packages, any state regulation to the contrary notwithstanding: that is to say, that the goods

Statement of the Case.

received by interstate commerce remain under the shelter of the interstate commerce clause of the Constitution, until by a sale in the original package they have been commingled with the general mass of property in the State; but, since the passage of the act of August 8, 1890, c. 728, 26 Stat. 313, which provides "that all fermented, distilled or other intoxicating liquors or liquids transported into any State or Territory, or remaining therein for use, consumption, sale or storage therein, shall upon arrival in such State or Territory be subject to the operation and effect of the laws of such State or Territory enacted in the exercise of its police powers, to the same extent and in the same manner as though such liquids or liquors had been produced in such State or Territory, and shall not be exempt therefrom by reason of being introduced therein in original packages or otherwise," while the receiver of intoxicating liquors in one State, sent from another State, has the constitutional right to receive them for his own use, without regard to the state laws to the contrary, he can no longer assert a right to sell them in the original packages in defiance of state law.

The South Carolina act of March 5, 1897, No. 340, amending the act of March 6, 1896, No. 61, is unconstitutional in so far as it compels the resident of the State who desires to order alcoholic liquors for his own use, to first communicate his purpose to a state chemist, and in so far as it deprives any non-resident of the right to ship by means of interstate commerce any liquor into South Carolina unless previous authority is obtained from the officers of the State of South Carolina, since as, on the face of these regulations, it is clear that they subject the constitutional right of the non-resident to ship into the State and of the resident in the State to receive for his own use, to conditions which are wholly incompatible with and repugnant to the existence of the right which the statute itself acknowledges.

THE bill below was filed by the appellee, a corporation created by the laws of California and a citizen of that State. It alleged, in substance, that the corporation was the owner of large vineyards in California, from which it produced well known qualities of pure wines and brandies and other liquors; that through its travelling agent, a citizen of the State of Virginia, it took orders from certain residents of the State of South Carolina residing in the city of Charleston, to deliver to each of them in Charleston certain original packages of wines and brandies, the products of the vineyards of the complainant; that in consequence of said orders seventy-three original packages for the customers aforesaid were shipped

in one car, by a contract for continuous interstate carriage from San Francisco to Charleston; that under a law of South Carolina, known as the dispensary law, certain officers of the State of South Carolina had seized the packages of liquor above described and prevented the delivery thereof, and openly avowed their intention to continue to levy upon any packages of liquor shipped into the State of South Carolina in violation of the law of the State. The bill moreover alleged another shipment of the same character and a like seizure. The bill then averred as follows:

"And your orator further shows that your orator intends in the course of its said business, as aforesaid, further and in addition to said shipments so ordered by its said customers in advance, as aforesaid, to ship also from San Francisco, California, to its agent in the State of South Carolina, and to store and warehouse in the State of South Carolina, and to sell in the State of South Carolina, in the original unbroken packages as imported, as aforesaid, to the residents and citizens of the State of South Carolina, its wines and other liquors, products of its vineyards, as aforesaid, for the lawful use and consumption of the said residents and citizens of the State of South Carolina in the due and lawful exercise of your orator's right of importation of such wines, etc., products of its vineyards, into the State of South Carolina in lawful intercourse, trade and commerce with the citizens and residents of the State of South Carolina, under the Constitution and laws of the United States, all of which shipments, as aforesaid, the defendants and other persons claiming to act as state constables and officials threaten to seize, take and carry away, detain, convert and sell, to the manifest wrong, damage and injury of your orator and its trade and business, as aforesaid.

"And your orator further shows that by and under the terms, principle, policy and operation of the said dispensary law of the State of South Carolina, as aforesaid, approved March 6, 1896, and amended March 5, 1897, all wines, beers, ales, alcoholic, spirituous and other intoxicating liquors are subjects of lawful manufacture, barter, sale, export and import in the State of South Carolina, and have been, are being,

and will continue to be lawfully used and consumed as a beverage by the citizens and residents of the State of South Carolina."

Averring the avowed purpose of the state officers to continue to seize all liquors thereafter shipped by the complainant into the State to residents therein or for sale in original packages, the bill proceeded to charge that the state law upon which the officers relied was void, because repugnant to the Constitution of the United States. That to prevent the continuing wrong which would necessarily arise from the conduct of the state officers and to avoid a multiplicity of suits, a writ of injunction was necessary restraining the state officers from interfering with complainant in its shipment of its products to residents of the State on their orders, and also enjoining the state officers from interfering with the complainant in shipping its products from the State of California into the State of South Carolina to its agents there for the purpose of selling the same in original packages, the provisions of the South Carolina law to the contrary notwithstanding. This mere outline of the averments of the bill suffices to convey an understanding of the controversy which the record presents. A restraining order was granted as prayed for against the designated state officers, and after due pleadings and proceedings this restraining order was perpetuated, and a final decree was entered in favor of the complainant in accordance with the prayer of the bill.

Mr. William A. Barber, Attorney General of the State of South Carolina, for appellants.

Mr. J. P. Kennedy Bryan for appellee.

Mr. Justice White delivered the opinion of the court.

In the two cases of *Scott* v. *Donald*, 165 U. S. 58, 107, the court was called upon to determine whether a law of the State of South Carolina, controlling the sale of intoxicating liquors within that State, was repugnant to the Constitution of the

United States. In one of the cases it was held that the court below had jurisdiction to entertain a bill filed by the complainants to enjoin the execution of the law, as to liquors by them owned; while in both cases it was decided that, in so far as the law then in question forbade the sending from one State into South Carolina of intoxicating liquors for the use of the person to whom it was shipped, the statute was repugnant to the third clause of section 8 of the first article of the Constitution of the United States, commonly spoken of as the Interstate Commerce clause of the Constitution. It was besides decided that the law in question, which created state officers or agents with authority to buy liquor to be sold in the State, and which forbade the sale of any liquor except that so bought and offered for sale by the state officers or agents, was also in violation of the Constitution of the United States, because amounting to an unjust discrimination against liquors, the products of other States. The conclusion reached on this latter subject was predicated not on the general theory which the statute put in practice, but on particular provisions of the law by which the discrimination was brought about. Whether a State could, without violating the Constitution of the United States, confer upon certain officers or agents the sole power to buy all liquors which were to be sold in the State, allowing no other liquor to be sold except that offered for sale by the designated officers or agents, was not decided. On the contrary, this question was reserved, for as the state law was found to violate the Constitution because of express discriminatory provisions which it contained, it became unnecessary to determine whether a law of that general character would be inherently repugnant to the Constitution of the United States. Referring to this last question, the court said (p. 101):

"It was pressed on us in the argument that it is not competent for a State, in the exercise of its police power, to monopolize the traffic in intoxicating liquors, and thus put itself in competition with the citizens of other States. This phase of the subject is novel and interesting, but we do not think it necessary for us now to consider it. It is sufficient for the present case to hold, as we do, that when a State recognizes the

manufacture, sale and use of intoxicating liquors as lawful it cannot discriminate against the bringing of such articles in and importing them from other States; that such legislation is void as a hindrance to interstate commerce and an unjust preference of the products of the enacting State as against similar products of other States."

The controversy which this record presents arises from a law of South Carolina, similar in its general scope to the one which was under review in *Scott* v. *Donald*. The statute before us, however, was enacted after the decision in *Scott* v. *Donald*, and changes in many important particulars the law which was passed on in that case. The statute, as changed, retains the general provisions conferring on the state officers or agents the exclusive right to buy all liquor which is to be sold in the State and to sell the same, but does not contain those clauses in the previous statute which were held to operate a discrimination. It, moreover, modifies the previous statute to the extent that it allows shipments of intoxicating liquors to be made from other States into the State of South Carolina to residents therein for their own use, but subjects the exercise of this right to designated regulations and restrictions. Despite these differences, it is asserted that the present law is repugnant to the Constitution of the United States for the following reasons: *First*, because although the features in the prior act which were held to be discriminatory have been eliminated from this act, nevertheless there are, it is asserted, other provisions in the present act which on their face amount to a discrimination, and therefore render the act void. *Second*, because as the act as at present drawn created state officers and confers upon them the power to buy all the liquor which is to be sold in the State, and forbids the sale of any other liquor by any other person, it is therefore in violation of the Constitution of the United States to the extent that it seeks to control or forbid the sale in original packages of all liquor shipped into South Carolina from other States. And this controversy presents for consideration the question which was reserved in *Scott* v. *Donald*. *Third*, because, although the amended statute recognizes the right of residents

of other States to ship intoxicating liquors to the residents of South Carolina and their right to receive the same, for their own use, it, in reality, it is asserted, denies such right, since its exercise is subjected to conditions which hamper and frustrate the same to such a degree that they are equivalent to a denial of the right itself. The two first contentions go to the whole statute, and therefore, if well taken, render it void as an entirety. The third is narrower in its purport, since it only assails as unconstitutional the particular restrictions which the statute imposes upon the right of the residents of another State to ship into South Carolina and of the residents of that State to receive liquor for their own use. We, therefore, at the outset, dispose of the two first contentions before approaching the third.

In the inception it is necessary to bear in mind a few elementary propositions, which are so entirely concluded by the previous adjudications of this court, that they need only be briefly recapitulated.

(*a.*) Beyond dispute the respective States have plenary power to regulate the sale of intoxicating liquors within their borders, and the scope and extent of such regulations depend solely on the judgment of the lawmaking power of the States, provided always, they do not transcend the limits of state authority by invading rights which are secured by the Constitution of the United States, and provided further, that the regulations as adopted do not operate a discrimination against the rights of residents or citizens of other States of the Union.

(*b.*) Equally well established is the proposition that the right to send liquors from one State into another, and the act of sending the same, is Interstate Commerce, the regulation whereof has been committed by the Constitution of the United States to Congress, and, hence, that a state law which denies such a right, or substantially interferes with or hampers the same, is in conflict with the Constitution of the United States.

(*c.*) It is also certain that the settled doctrine is that the power to ship merchandise from one State into another car-

ries with it, as an incident, the right in the receiver of the goods to sell them in the original packages, any state regulation to the contrary notwithstanding; that is to say, that the goods received by Interstate Commerce remain under the shelter of the Interstate Commerce clause of the Constitution, until by a sale in the original package they have been commingled with the general mass of property in the State.

This last proposition, however, whilst generically true, is no longer applicable to intoxicating liquors, since Congress in the exercise of its lawful authority has recognized the power of the several States to control the incidental right of sale in the original packages, of intoxicating liquors, shipped into one State from another, so as to enable the States to prevent the exercise by the receiver of the accessory right of selling intoxicating liquors in original packages except in conformity to lawful state regulations. In other words, by virtue of the act of Congress the receiver of intoxicating liquors in one State, sent from another, can no longer assert a right to sell in defiance of the state law in the original packages, because Congress has recognized to the contrary. The act of Congress referred to, c. 728, was approved August 8, 1890, and is entitled "An act to limit the effect of the regulations of commerce between the several States and with foreign countries in certain cases." It reads as follows:

"That all fermented, distilled or other intoxicating liquors or liquids transported into any State or Territory, or remaining therein for use, consumption, sale or storage therein, shall upon arrival in such State or Territory be subject to the operation and effect of the laws of such State or Territory enacted in the exercise of its police powers, to the same extent and in the same manner as though such liquids or liquors had been produced in such State or Territory, and shall not be exempt therefrom by reason of being introduced therein in original packages or otherwise." 26 Stat. 313.

The scope and effect of this act of Congress have been settled. *In re Rahrer*, 140 U. S. 545; *Rhodes* v. *Iowa*, *ante*, 412.

In the first of these cases the constitutional power of Congress to pass the enactment in question was upheld, and the

purpose of Congress in adopting it was declared to have been to allow state laws to operate on liquor shipped into one State from another, so as to prevent the sale in the original package in violation of state laws. In the second case the same view was taken of the statute, and although it was decided that the power of the State did not attach to the intoxicating liquor when in course of transit and until receipt and delivery, it was yet reiterated that the obvious and plain meaning of the act of Congress was to allow the state laws to attach to intoxicating liquors received by Interstate Commerce shipments before sale in the original package, and therefore at such a time as to prevent such sale if made unlawful by the state law.

The claim that the state statute is unconstitutional because it deprives of the right to sell imported liquor in the original packages rests, therefore, on the assumption that the state law is a regulation of Interstate Commerce, because it forbids the doing of an act which in consequence of the permissive grant resulting from the act of Congress, the State had undoubtedly the lawful power to do. Indeed, the entire argument by which it is endeavored to maintain the contention arises from excluding from view the change as to the sale of intoxicating liquor arising from the act of Congress; that is, it rests on the fallacious assumption that the State is without power to forbid the sale of intoxicating liquors in original packages despite the act of Congress, while in fact, as a result of that act, the restrictions and regulations of state laws become operative on the original package before the sale thereof, and therefore such packages cannot be sold if the state law forbids the sale, or can be only so sold in the manner and form prescribed by the state regulations. In view of the self-evident misconception upon which the argument proceeds, it becomes unnecessary to review the many decisions of this court cited in support of the proposition relied upon. Their authority is unquestioned, but their irrelevancy is equally obvious. They all relate to and illustrate various aspects of the principle that the right to send merchandise from one State to another carries with it as an incident the power of

the one by whom they are received to sell them in the original package, even although so doing may be contrary to a state law. None of them have the remotest bearing on the exception to this general rule springing from the act of Congress. The right of the State to forbid the sale of liquors in the original packages being clear, it results that a state law cannot be void because in excess of state authority, when it is but the execution of a power lawfully vested in the legislature of the State. This reasoning would dispose of the case, but for the contention that the act of Congress in question has no bearing on the controversy, and indeed that in this case the power of the State to control the sale of intoxicants in an original package must be determined just as if the act of Congress had never been passed.

Congress, it is argued, by the act in question has submitted merchandise in original packages only to the control of state laws "enacted in the exercise of its police powers." As the state law here in question does not forbid, but, on the contrary, authorizes the sale of intoxicants within the State, hence it is not a police law, therefore not enacted in the exercise of the police power of the State, and consequently does not operate upon the sale of original packages within the State. But the premise upon which these arguments rest is purely arbitrary and imaginary. From the fact that the state law permits the sale of liquor subject to particular restrictions and only upon enumerated conditions, it does not follow that the law is not a manifestation of the police power of the State. The plain purpose of the act of Congress having been to allow state regulations to operate upon the sale of original packages of intoxicants coming from other States, it would destroy its obvious meaning to construe it as permitting the state laws to attach to and control the sale only in case the States absolutely forbade sales of liquor, and not to apply in case the States determined to restrict or regulate the same.

The confusion of thought which is involved in the proposition to which we have just referred is embodied in the principle upon which the court below mainly rested its conclusion. That is, "if all alcoholic liquors, by whomsoever held, are

injuriously discriminated against the products of other States, and which in consequence of such discrimination was not a police law in the correct sense of those words. It would lead to an impossible conclusion to treat the sentences in *Scott* v. *Donald*, upon which reliance is placed as having the significance attributed to them in argument, since, as we have already stated, the court expressly reserved the question of whether a state law which undertook to confer on its officers power to buy all liquor which was to be sold in the State would be constitutional if no express discriminatory provisions were found in it. It is obvious from even a casual reading of the opinion that the court did not pass on the very question which it expressly declared it abstained from deciding.

A more plausible but equally unsound proposition is involved in the contention that the state law in question is inherently discriminatory. The argument by which this is supported is as follows: The law gives to the state officers exclusive right to purchase all the liquor to be sold in the State. The authority to purchase includes the right on the part of the buyer to determine from whom and where the purchase may be made. This gives the officers the opportunity, by exercising their right of purchase, to buy in one State to the detriment and exclusion of the products of every other State. As no other product, then, but that which the officers buy can be sold in the State, it follows that, although intoxicants will be freely offered for sale in the State, only liquors coming from the State in which the officer has purchased will be so sold, and the products of all other States will be excluded from sale and be thereby discriminated against. And whether these consequences will arise will depend solely upon the arbitrary discretion of the state officers in determining where and from whom the liquor that they propose to offer for sale will be by them purchased. This, it is argued, demonstrates the inherent discrimination arising from legislation which makes state officers the sole persons authorized to buy and sell liquor — a discrimination whose unjust consequences can only be avoided by recognizing the right of the residents of all other States to ship their products into the State and sell them in original

packages. In the first place, to maintain this proposition, the presumption must be indulged in that the state officer, in purchasing as provided by the state statute, instead of buying fairly and in the best markets, affording an equal chance to all sellers and to every locality, will, on the contrary, so act as to discriminate against the products of one or more States and in favor of those of others.

Such a presumption would be equally justified in case the state law authorized only residents to be licensed to sell liquor and restricted the number of such licenses. The persons so licensed, whether one or one hundred, would buy where they pleased the liquor they proposed to sell, and it would therefore be fully as cogent to argue that they might elect to buy in one place instead of another, and thus discriminate against the persons or places from where or from whom they did not buy. The argument will not be strengthened, even if it be conceded that there is a difference between licensing a number of persons to buy or sell and concentrating the power, to buy all the liquor to be sold, in the hands of state officers, and by further conceding that whether the statute discriminates against producers of other States is to be determined solely by the power to bring about the discrimination which might arise from its execution, and not by whether the power has been so carried out as to cause an actual discrimination. Under these concessions there would doubtless be force in the position taken, if the authority of the state officers to buy the liquor to be by them sold, excluded the right of the residents of every other State to ship to the residents of South Carolina liquor for their own use, for in that event the products of the State from which no liquor was bought by the state officers would be wholly excluded from the State, although by the state law liquor could be sold therein by the state agents. But the weight of the contention is overcome when it is considered that the Interstate Commerce clause of the Constitution guarantees the right to ship merchandise from one State into another, and protects it until the termination of the shipment by delivery at the place of consignment, and this right is wholly unaffected by the act of Congress which allows state

authority to attach to the original package before sale but only after delivery. *Scott* v. *Donald*, *supra*; *Rhodes* v. *Iowa*, *supra*. It follows that under the Constitution of the United States every resident of South Carolina is free to receive for his own use liquor from other States and that the inhibitions of a state statute do not operate to prevent liquors from other States from being shipped into such State, on the order of a resident for his use. This demonstrates the unsoundness of the contention that if state agents are the only ones authorized to buy liquor for sale in a State, and they select the liquor to be sold from particular States, the products of other States will be excluded. They cannot be excluded if they are free to come in for the use of any resident of South Carolina who may elect to order them for his use. The products of other States will be, of course, excluded from sale in the original packages in the State, but as the right of the State to prevent the sale in original packages of intoxicants coming from other States, in consequence of the state law forbidding the sale of any but certain liquor, attaches to the original packages from other States by virtue of the act of Congress, the inability to make such sales arises from a lawful state enactment. To hold the law unconstitutional because it prevents such sale in the original package would be to decide that the state law was unconstitutional because it exerted a power which the State had a lawful right to exercise. Indeed, the law of the State here under review does not purport to forbid the shipment into the State from other States of intoxicating liquors for the use of a resident, and if it did so, it would, upon principle and under the ruling in *Scott* v. *Donald*, to that extent be in conflict with the Constitution of the United States. It is argued, that the foregoing considerations are inapplicable since the state law, now before us, whilst it recognizes the right of residents of other States to ship liquor into South Carolina for the use of residents therein, attaches to the exercise of that right such restrictions as virtually destroy it.

But the right of persons in one State to ship liquor into another State to a resident for his own use is derived from the Constitution of the United States, and does not rest on the

grant of the state law. Either the conditions attached by the state law unlawfully restrain the right or they do not. If they do — and we shall hereafter examine this contention — then they are void. If they do not, then there is no lawful ground of complaint on the subject.

We are thus brought to examine whether the regulations imposed by the state law on the right of the residents of other States to ship into the State of South Carolina alcoholic liquor to the residents of that State when ordered by them for their use, are so onerous and burdensome in their nature as to substantially impair the right; that is, whether they so hamper and restrict the exercise of the right as to materially interfere with or, in effect, prevent its enjoyment.

Before, however, approaching this question, we briefly dispose of two other contentions. It is said that the law now before us is expressly discriminatory, since it really contains the provisions found in the previous statute, and which were held in *Scott* v. *Donald*, to be repugnant to the Constitution of the United States. This argument is predicated on the following proposition: The law now before us was passed subsequent to the decision in *Scott* v. *Donald*, holding that the discriminatory clauses in the previous act were void, and it entirely omits them. Its repealing clause, however, only repeals laws inconsistent therewith, and the argument is, that as the provisions found in the previous law, and which were declared unconstitutional by this court, are not inconsistent with the present law, therefore they continue to exist, and the present law must be interpreted as if they were written in it. The error of the argument is so self evident as to require only a passing notice. The very fact that the omitted provisions had been before the enactment of the new law declared to be unconstitutional affords a conclusive demonstration of their inconsistency with the present law. In addition, the fact that the present law has omitted the provisions which had been declared unconstitutional excludes the supposition that it was the intention of the new law, by silence on the subject, to perpetuate and reenact the void provisions. It is, moreover, contended that there is an express discrimination found in the present stat-

ute, which was not referred to in *Scott* v. *Donald*, the provision in question being one which authorizes the use by a resident of South Carolina of wine or liquor made by him for such purpose. The context of the entire statute conclusively demonstrates that the right thus given in an exceptional and limited case in no way relieves alcoholic liquors made by a citizen of South Carolina for his own use from the restrictions imposed by the statute as to the sale of all other liquors, and this, therefore, leaves liquor made by a resident for his own use, under the control of the general regulations which the statute creates, and this completely answers the contention.

The right recognized by the State in residents of another State to ship into South Carolina to a resident of that State liquor for his own use is regulated by the statute as follows, act of March 5, 1897, No. 340, amending the act of March 6, 1896, No. 61:

"Any person resident in this State intending to import for personal use and consumption any spirituous, malt, vinous, fermented, brewed or other liquor, containing alcohol, from any other State or foreign country, shall first certify to the chemist of the South Carolina College the quantity and kind of liquor proposed to be imported, together with the name and place of business of the person, firm or corporation from whom it is desired to purchase, accompanying such certificate with a statement that the proposed consignor has been requested to forward a sample of such liquor to the said chemist at Columbia, South Carolina. Upon the receipt of said sample, the said chemist shall immediately proceed to test the same, and if it be found to be pure and free from any poisonous, hurtful or deleterious matter, he shall issue a certificate to that effect, stating therein the name of the proposed consignor and consignee, and the quantity and kind of liquor proposed to be imported thereunder, which certificate shall be dated and forwarded by the said chemist, postpaid, to the proposed consignor at his place of business. The said consignor shall cause such certificate to be attached to the package containing the liquor when it is shipped into this State, and no package bearing such certificate shall be liable to seizure and confiscation;

but any package of spirituous, malt, vinous, fermented, brewed or other liquid or liquor containing alcohol imported into this State without such certificate, or any package containing liquor other than that described in the certificate thereto attached, or any package shipped by or to any person or persons not named in such certificate, shall be seized and confiscated as provided in this act. Any certificate obtained from the chemist as herein provided shall be used within sixty days after the date of its issue, and shall be invalid thereafter. It shall be unlawful to use said certificates for more than one importation."

The regulation, then, compels the resident of the State who desires to order for his own use, to first communicate his purpose to a state chemist. It moreover deprives any non-resident of the right to ship by means of Interstate Commerce any liquor into South Carolina unless previous authority is obtained from the officers of the State of South Carolina. On the face of these regulations, it is clear that they subject the constitutional right of the non-resident to ship into the State and of the resident in the State to receive for his own use, to conditions which are wholly incompatible with and repugnant to the existence of the right which the statute itself acknowledges. The right of the citizen of another State to avail himself of Interstate Commerce cannot be held to be subject to the issuing of a certificate by an officer of the State of South Carolina, without admitting the power of that officer to control the exercise of the right. But the right arises from the Constitution of the United States; it exists wholly independent of the will of either the lawmaking or the executive power of the State; it takes its origin outside of the State of South Carolina, and finds its support in the Constitution of the United States. Whether or not it may be exercised depends solely upon the will of the person making the shipment, and cannot be in advance controlled or limited by the action of the State in any department of its government. As the law directs that a sample of the liquor proposed to be shipped shall be sent to the state officer in advance of the shipment, and as a prerequisite for obtaining permission to make a

subsequent shipment, it is claimed in argument that this law is an inspection law passed for the purpose of guaranteeing the purity of the product to be shipped into the State for the use of a resident therein, and therefore it is but a valid manifestation of the police power of the State exerted for the purposes of inspection only. But it is obvious that this argument is unsound, as the inspection of a sample sent in advance is not in the slightest degree an inspection of the goods subsequently shipped into the State. The sample may be one thing and the merchandise which thereafter comes in another. It is hence beyond reason to say that the law provides for an inspection of the goods shipped into the State from other States, when in fact it exacts no inspection whatever. Conceding, without deciding, the power of the State where it has placed the control of the sale of all liquor within the State in charge of its own officers to provide an inspection of liquors shipped into a State by residents of other States for use by residents within the State, it is clear that such a law to be valid must not substantially hamper or burden the constitutional right on the one hand to make and on the other to receive such shipment. A law of this nature must at least provide for some inspection of the article to justify its being an inspection law. The power of the State to inspect an article protected by the guarantees of the Constitution, because intended only for use and which cannot be sold, is in the nature of things restrained by limitations arising from the constitutional provisions of a more restricted nature than would be the power to inspect articles intended for sale within the State. The greater harm and abuse which might arise in the latter case suggests a wider power than is incident to the other.

It follows from the foregoing that the decree below rendered was well founded in so far as it restrained the defendants from seizing the property shipped into the State of South Carolina from the State of California by the complainant for the residents of the State of South Carolina on the orders of such residents for their own use, because said shipments had not been made in compliance with the regulations

of the law of South Carolina. But it further follows that the decree below was wrong in so far as it restrained the state officers from levying upon the property of the complainant shipped into the State to agents of complainant for the purpose of being stored and sold therein in original packages and from interfering with such sales. These conclusions require that the judgment below be affirmed in part and reversed in part.

This renders it necessary to remand the case to the court below with instructions to enter a decree setting aside the injunction and dismissing the bill to the extent above indicated, and perpetuating the injunction only in so far as is above pointed out, the whole in accordance with the views herein above expressed, and it is so ordered.

MR. JUSTICE SHIRAS dissenting in part, with whom the CHIEF JUSTICE and MR. JUSTICE MCKENNA concurred.

In the opinion and judgment of the court, in so far as they affirm the decree of the Circuit Court restraining the state officers from seizing property shipped into the State of South Carolina from the State of California by the complainant for residents of South Carolina on their order for their own use, I fully concur. But the reasons which lead me to so concur constrain me to withhold my assent from that portion of said opinion and judgment which reverses the decree below, in respect that it restrained such officers from levying upon and confiscating property of the complainant shipped into the State to agents for the purpose of being stored and sold therein in original packages.

In the few observations I shall submit it will be assumed, as well settled, that before the passage of the act of August 8, 1890, known as the Wilson Act, it was not within the power of any State to forbid the importation of wines and liquors from foreign countries or other States, nor their sale in the original packages, nor to subject such sale to discriminatory taxes or regulations. *Walling* v. *Michigan*, 116 U. S. 446; *Bowman* v. *Chicago Railway Co.*, 125 U. S. 465, 507;

Leisy v. *Hardin*, 135 U. S. 100; *Lyng* v. *Michigan*, 135 U. S. 161.

The case before us, therefore, turns upon the proper construction and application of that statute.

Since its passage it has been considered by this court in two cases, and the conclusions therein reached will now be pointed out.

In the case of *In re Rahrer*, 140 U. S. 545, the question for adjudication was the validity of a constitutional provision of the State of Kansas, which provided that "the manufacture and sale of intoxicating liquors shall be forever prohibited in this State, except for medical, scientific and mechanical purposes," and of certain statutes of that State which declared that "any person or persons who shall manufacture, sell or barter any spirituous, malt, vinous, fermented or other intoxicating liquors shall be guilty of a misdemeanor, and be punished as hereinafter provided: Provided, however, That such liquors may be sold for medical, scientific and mechanical purposes as provided in this act;" and it was held that, in the case of a person arrested by the state authorities for selling imported liquor on the 9th day of August, 1890, contrary to the law of the State which forbade the sale, the act of Congress which had gone into effect on the 8th day of August, 1890, providing that imported liquors should be subject to the operation and effect of the state laws to the same extent and in the same manner as though the liquors had been produced in the State, justified the imposition of the penalties of the state law.

It will be perceived that this was a case in which the state laws wholly prohibited the manufacture and sale of intoxicating liquors as articles of ordinary consumption and merchandise; and this court said, referring to the Wilson bill, "Congress did not use terms of permission to the State to act, but simply removed an impediment to the enforcement of the state laws in respect to imported packages in their original condition. . . . It imparted no power to the State not then possessed, but allowed imported property to fall at once upon arrival within the local jurisdiction."

In *Scott* v. *Donald*, 165 U. S. 58, was presented the question of the validity of the act of the general assembly of South Carolina, approved January 2, 1895, generally known as the State Dispensary Law. That legislation did not forbid the use, manufacture or sale of intoxicating liquors, but enacted an elaborate system of regulation, whereby no wines or liquors, except domestic wines, should be manufactured or sold except through the agency of a state board of control, a commissioner and certain county dispensers, and after an inspection by a state chemist.

Packages of wines and liquors made in other States and imported by a resident of the State for his own use, and in the possession of railroad companies which, as common carriers, had brought the packages within the State, were seized and confiscated as contraband by constables of the State.

This court, after considering certain provisions of the act which relieved the sale of domestic wines from restrictions imposed upon imported wines and also those which created a system of inspection, said —

"This is not a law purporting to forbid the importation, manufacture, sale and use of intoxicating liquors, as articles detrimental to the welfare of the State and to the health of its inhabitants, and hence is not within the scope and operation of the act of Congress of August 8, 1890. That law was not intended to confer upon any State the power to discriminate injuriously against the products of other States in articles whose manufacture and use are not forbidden, and which are therefore the subjects of legitimate commerce. When that law provided that 'all fermented, distilled or intoxicating liquors, transported into any State or Territory, remaining therein for use, consumption, sale or storage therein, should, upon arrival in such State or Territory, be subject to the operation and effect of the laws of such State or Territory enacted in the exercise of its police powers, to the same extent and in the same manner as though such liquids or liquors had been produced in such State or Territory, and should not be exempt therefrom by reason of being introduced therein in original packages or otherwise,' evidently equality or uniform-

ity of treatment under state laws was intended. The question whether a given state law is a lawful exercise of the police power is still open, and must remain open, to this court. Such a law may forbid entirely the manufacture and sale of intoxicating liquors and be valid. Or it may provide equal regulations for the inspection and sale of all domestic and imported liquors and be valid. But the State cannot, under the Congressional legislation referred to, establish a system which, in effect, discriminates between interstate and domestic commerce in commodities to make and use which are admitted to be lawful. . . . It is sufficient for the present case to hold, as we do, that when a State recognizes the manufacture, sale and use of intoxicating liquors as lawful, it cannot discriminate against the bringing of such articles in and importing them from other States; that such legislation is void as a hindrance to Interstate Commerce and an unjust preference of the products of the enacting State as against similar products of the other States."

Accordingly the conclusion reached was that, as respected residents of the State of South Carolina desiring to import foreign wines and liquors for their own use, the act in question in that case was void.

In the present case, which arose under a later statute, this court follows *Scott* v. *Donald* in holding that the act is invalid as sought to be applied to the importation by residents of the State for their own use, but holds that the residents of other States cannot import wines and liquors and sell them in the original packages, although such articles are recognized by the State as lawful subjects of manufacture, use and sale.

The court concedes that it is not within the power of the State, even when reinforced by the act of Congress of August, 1890, to deprive a resident of one State of the right to ship liquor into another State to a resident for his own use, "because such right is derived from the Constitution of the United States, and does not rest on the grant of the state law," yet holds that the act of South Carolina can validly declare that all liquors imported from other States, for the purpose of sale in original packages, can be seized and confiscated, the com-

mon carrier thereof subjected to fine, and the consignee, if he removes the liquors from the depot or pays freight or express charges thereon, subjected to a fine of five hundred dollars, and to an imprisonment of twelve months at hard labor in the state penitentiary.

Such legislation manifestly forbids Interstate Commerce in articles whose manufacture and sale within the State are permitted, and, in view of the previous decisions of this court, can only be defended by invoking the provisions of the act of Congress. This seems to be the theory upon which the opinion of the majority proceeds, as shown by the following statement: "The claim that the state statute is unconstitutional because it deprives of the right to sell imported liquors in the original packages, rests on the assumption that the state law is a regulation of Interstate Commerce, because it forbids the doing of an act which, in consequence of the permissive grant resulting from the act of Congress, the State had undoubtedly the lawful power to do. Indeed, the entire argument by which it is endeavored to maintain the contention arises from excluding from view the change as to the sale of intoxicating liquors arising from the act of Congress."

But, if the act of Congress can validly operate to authorize the State to forbid the sale in original packages of imported articles of the same kind with those whose manufacture and sale within the State are permitted and regulated, I am unable to see why it cannot also operate to authorize the State to forbid the importation for use. Once concede that it is competent for Congress to abdicate its control over Interstate Commerce in articles whose manufacture, sale and use are lawful within the State, and to confer upon the State the power to forbid importation of such articles for *sale*, it must follow that it would equally be competent for Congress to authorize the State to forbid the importation of such articles for *use*. And, conversely, if it be not competent for Congress to authorize a State to forbid the importation for use of articles whose use in domestic commerce is lawful, so it would not be competent for Congress to authorize a State to forbid the importation for sale of articles whose sale in domestic commerce is lawful.

Dissenting Opinion: Shiras, J., Fuller, C.J., McKenna, J.

I am altogether unwilling to attribute to Congress an intention to abandon the protection of Interstate Commerce in articles of food or drink, whether for personal use or for sale, where similar articles are treated by a State as lawful subjects of domestic commerce. If such were the intention of Congress in the act of August, 1890, I should be compelled to regard such legislation as invalid. The control and regulation of foreign and interstate commerce are among the most important powers possessed by the National legislature, and, as has often been said by this court, were among the most potent causes which led to the establishment of the Constitution. The conceded purpose of protecting commerce from hostile action between the States would be defeated if Congress could withdraw from the exercise of its powers in such matters, and turn them over to the legislatures of the States.

But there is no reason to suppose that Congress intended any such act of abdication in the present instance. Reasonable meaning and effect can be given to the act of August 8, 1890, without giving it such a construction as would raise the serious question of its constitutionality.

Its plain meaning is that, if, in the *bona fide* exercise of its police power, the State finds it necessary to declare that all fermented, distilled or other intoxicating liquor is of a detrimental character, and that its use and consumption are against the morals, good health and safety of its inhabitants, it may legislate, on that assumption, with equal effect as to such liquor whether imported or of domestic manufacture. Such legislation may take the form of total prohibition, and be valid, as we held in *In re Rahrer*, 140 U. S. 545, under a statute of the State of Kansas. The articles prohibited were thus taken out of the sphere of commerce, whether interstate or domestic, and no discriminations were thereby made or attempted adversely to the persons or property of other States.

Or the legislation may seek to regulate the sale of intoxicating liquors, and if the regulations are reasonable, in the fair exercise of the police power, applicable alike to articles imported and to those made in the State, their validity may well be sustained, without infringing upon the Federal control of Interstate Commerce.

Thus if the State of South Carolina, instead of prohibiting the sale of imported liquors in imported packages altogether and confiscating them to her own use, had seen fit to prescribe reasonable regulations of the sale — such, for instance, as forbade its taking place on Sunday, or in the night time, or to be drunk on the premises, or to be made to minors, and if such regulations likewise applied to the sale of domestic liquors — then the case might be deemed to fall within the proper exercise of the police power.

Far different is the nature of the provisions of these acts of South Carolina. They do not pretend to forbid, either the use, manufacture or sale of intoxicating liquors. They do not provide a reasonable system of inspection, calculated to protect the public from imposition. They do not seek to subject the sale to reasonable regulations, but do contain provisions which, if carried into effect, would wholly prevent the makers and owners of wines and liquors made in foreign countries or in the other States from exercising the *right* of free commerce under the Constitution. At the most, it can only be said that such persons can be permitted to send their property into South Carolina for sale if the state authorities think fit to allow them that *privilege*.

Nor, even if allowed this restricted privilege of importation, are they permitted to sell their property for what it is worth in the market, because they can sell only through a county dispenser, who is compelled to give a bond in the penal sum of three thousand dollars, conditioned that he will not sell intoxicating liquors at a price other than that fixed by the state board of control. This provision not merely hampers the citizens of the other States in their exercise of the right of trade and commerce, but deprives the residents of the State of the right to purchase articles of a commercial character at prices regulated by open competition.

It may be said that such a construction of the act of Congress would deprive it of actual operation — that the power and laws of the States would be left just as they were before its passage. But, not infrequently, courts have said that there are statutes that are merely declaratory of the law as

it previously existed. And such declaratory statutes are not without value when they serve to elucidate existing law, or to remove uncertainty when decisions or prior enactments are supposed to conflict. The act in question may well be regarded as a legislative attempt to define the boundaries between Federal and state powers in respect to interstate commerce in intoxicating liquors; and this court, in the cases of *In re Rahrer* and of *Scott* v. *Donald*, and in the recent case of *Rhodes* v. *Iowa*, *ante*, 412, has so treated it. But it cannot, as I think, be either interpreted or sustained as an effort to transfer the regulative control in matters of Interstate Commerce from the Nation to the States.

The opinion of the majority, as I read it, fails to recognize frequent and well considered decisions of this court, and seems to justify a brief reference to them.

In *Brown* v. *Maryland*, 12 Wheat. 419, an act of the State of Maryland imposing penalties on all importers of foreign articles or commodities, including wines and spirituous liquors, if they should sell the same without having first procured a license from the state authorities, was held repugnant to the provision of the Constitution of the United States, which declares that "no State shall, without consent of Congress, lay any impost, or duty on imports or exports, except what may be absolutely necessary for executing its inspection laws," and to that which declares that Congress shall have power "to regulate commerce with foreign nations, among the several States, and with the Indian tribes." In the course of his reasoning Chief Justice Marshall said: "The object of the Constitution would be as completely defeated by a power to tax the article in the hands of the importer the instant it was landed, as by a power to tax it while entering the port. There is no difference, in effect, between a power to prohibit the sale of an article and a power to prohibit its introduction into the country. The one would be a necessary consequence of the other. No goods would be imported if none could be sold."

And again: "If this power to regulate commerce reaches the interior of a State, and may be there exercised, it must

be capable of authorizing the sale of those articles which it introduces. Commerce is intercourse; one of its most ordinary ingredients is traffic. It is inconceivable that the power to authorize this traffic, when given in the most comprehensive terms, with the intent that its efficacy should be complete, should cease at the point when its continuance is indispensable to its value. To what purpose should the power to allow importation be given, unaccompanied with the power to authorize a sale of the thing imported? Sale is the object of importation, and is an essential ingredient of that intercourse, of which importation constitutes a part. It is as essential an ingredient, as indispensable to the existence of the entire thing, then, as importation itself. It must be considered as a component part of the power to regulate commerce. Congress has a right, not only to authorize importation, but to authorize the importer to sell. . . . The power claimed by the State is, in its nature, in conflict with that given to Congress; and the greater or less extent in which it may be exercised does not enter into the inquiry concerning its existence."

Walling v. *Michigan*, 116 U. S. 446, was a case wherein was brought into question the validity of a statute of the State of Michigan, which imposed a tax or duty on persons who, not having their principal place of business within the State, engage in the business of selling liquors, to be shipped into the State; and it was held that a discriminating tax imposed by a State, operating to the disadvantage of products of other States when introduced into the first mentioned State, is, in effect, a regulation of commerce between the States, and as such a usurpation of the power conferred by the Constitution upon Congress. Replying to the contention on behalf of the statute, that it was passed in the exercise of the police power of the State, Mr. Justice Bradley said: "This would be a perfect justification of the act if it did not discriminate against the citizens and products of other States in a matter of commerce between the States, and thus usurp one of the prerogatives of the national legislature. The police power cannot be set up to control the inhibitions of the Fed-

eral Constitution, or the powers of the United States Government created thereby."

In *Robbins* v. *Shelby County Taxing District*, 120 U. S. 489, it was held that interstate commerce cannot be taxed at all by a State, even though the same amount of tax should be laid on domestic commerce, or that which is carried on solely within the State.

A law of the State of Iowa forbidding any common carrier from bringing within that State, for any person or corporation, any intoxicating liquors from any other State or Territory, without a permit from the state authorities, was held void in the case of *Bowman* v. *Chicago & Northwestern Railway*, 125 U. S. 465, and the court, through Mr. Justice Matthews, said: "Here is the limit between the sovereign power of the State and the Federal power. That is to say, that which does not belong to commerce is within the jurisdiction of the police power of the State, and that which does belong to commerce is within the jurisdiction of the United States. . . . The same process of legislation and reasoning adopted by the State and its courts would bring within the police power any article of consumption that a State might wish to exclude, whether to that which was drank or to food and clothing."

By an act passed in 1871, the legislative assembly of the District of Columbia subjected persons selling imported goods without a license to penalties, and this act was held invalid in *Stoutenburg* v. *Hennick*, 129 U. S. 141; and in disposing of the contention that Congress must be regarded as having authorized or adopted this legislation, Mr. Chief Justice Fuller said: "In our judgment Congress, for the reasons given, could not have delegated the power to enact the third clause of the twenty-first section of the act of assembly, construed to include business agents such as Hennick; and there is nothing in this record to justify the assumption that it endeavored to do so, for the powers granted to the District were municipal merely, and although by several acts Congress repealed or modified parts of this particular by-law, these parts were separably operative and such as were within the scope of municipal action, so that this Congressional legislation can-

not be resorted to as ratifying the objectionable clause, irrespective of the inability to ratify that which could not have been originally authorized."

In *Minnesota* v. *Barber*, 136 U. S. 313, this court held invalid a statute of the State of Minnesota, which made it a matter of fine or imprisonment for any one to sell any fresh beef, mutton, lamb or pork which had not been inspected in a manner prescribed in the act. Referring to the contention, in behalf of the State, that there was no discrimination against the products and business of other States for the reason that the statute requiring an inspection of animals on the hoof, as a condition for the privilege of selling in the State, was applicable alike to all owners of such animals, whether citizens of Minnesota or citizens of other States, this court, through Mr. Justice Harlan, said: "To this we answer that a statute may, upon its face, apply equally to the people of all the States, and yet be a regulation of Interstate Commerce which a State may not establish. A burden imposed by a State upon Interstate Commerce is not to be sustained simply because the statute imposing it applies alike to the people of all the States, including the people of the State enacting such statute. The people of Minnesota have as much right to protection against the enactments of that State, interfering with the freedom of commerce among the States, as have the people of other States. Although this statute is not avowedly, or in terms, directed against the bringing into Minnesota of the products of other States, its necessary effect is to burden or affect commerce with other States, as involved in the transportation into that State, for the purposes of sale there, of all fresh beef, veal, mutton or pork, however free from disease may have been the animals from which it was taken."

We did not find it necessary in *Scott* v. *Donald* to pass upon the validity of a scheme whereby a State should seek to establish itself as a trader in articles of commerce, and to punish as criminals all persons who should attempt to deal in such articles. Nor has the court seen fit to discuss that question in the present case. It may be that, if confined to articles of

state production, such a scheme might not be open to objections on Federal grounds. But where a State proposes to create a monopoly in articles which its own legislation recognizes as proper subjects of manufacture, sale and use, and where those articles are a part of international and Interstate Commerce, it is, I submit, too plain to call for argument that such an attempt does not comport with that freedom of trade and commerce, to preserve which is one of the most important purposes of our Federal system.

If these views are sound, then the acts of South Carolina in question, in so far as they seek to prevent citizens of that State from importing for their own use wines and liquors, and to arbitrarily forbid, and not by reasonable regulations, control sales of such articles when imported, are void as an unconstitutional interference with Interstate Commerce.

I think the decree of the Circuit Court should be affirmed.

I am authorized to state that the CHIEF JUSTICE and MR. JUSTICE MCKENNA concur in the views of this opinion.

VANCE *v.* W. A. VANDERCOOK COMPANY (No. 2).

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA.

No. 515. Argued March 9, 10, 1898. — Decided May 9, 1898.

In determining from the face of a pleading whether the amount really in dispute is sufficient to confer jurisdiction upon a court of the United States, it is settled that if from the nature of the case as stated in the pleadings there could not legally be a judgment for an amount necessary to the jurisdiction, jurisdiction cannot attach even though the damages be laid in the declaration at a larger sum.

The courts of South Carolina having held that in an action of trover consequential damages are not recoverable, and the damage claimed by the plaintiff below, in this case, omitting the consequential damages, being less than the sum necessary to give the Circuit Court jurisdiction of it, it follows that, on the face of the complaint, that court was without jurisdiction over the action.

Statement of the Case.

THE appellee, a corporation of the State of California, began this action against the present plaintiffs in error, citizens of the State of South Carolina, averring the alleged wrongful seizure by the defendants Bahr and Scott, at a railroad depot in the city of Charleston, South Carolina, of packages of wines and brandies, the property of the plaintiff. It was averred that at the time of the seizure the liquors were in the custody of a common carrier, under a shipment from San Francisco to the agent of the plaintiff at Charleston, who was to make delivery of each package to a particular individual, who, prior to the shipment, had given an order for the same. Averring that the defendant Vance had subsequently to the seizure, and with knowledge of its wrongful nature, received said packages into his custody, it was further alleged that demand had been made for the return of the property seized, that it was still detained, and that plaintiff was entitled to the immediate possession thereof. Judgment was prayed against the defendants for the recovery of possession of the packages or their value, alleged to be one thousand dollars, in case delivery could not be had, and for damages in the sum of ten thousand dollars. There was an allegation of special damage, to wit: "That by said malicious trespass of said defendants and their continuation in the wrongful detention of said sixty-eight packages of wine the plaintiff has been greatly injured in its lawful trade and business with the citizens and residents of the State of South Carolina to its great hurt and damage in the breaking up of such trade and commerce." Itemized lists of the packages were attached as exhibits to the complaint.

It was also alleged that the defendants claimed that the acts by them done were performed under the authority of a law of South Carolina designated as the dispensary law, and it was charged that the statute was void, because in conflict with the Constitution of the United States. It was moreover averred that the forcible seizure and carrying away of the packages and the detention thereof were done "knowingly, wrongfully, wilfully and maliciously, with intent to oppress and humiliate and intimidate this plaintiff, and make it afraid

to rely upon the Constitution and laws of the United States, and the judicial power thereof, for its protection in those rights, privileges and immunities secured to the plaintiff by the Constitution and laws of the United States." It was also alleged that the defendants, by "the said malicious trespass and wrongful detainer," intended to deter and intimidate plaintiff and others from asserting their rights under the Constitution of the United States.

S. W. Vance filed a separate answer, while Bahr and Scott jointly answered. The respective answers set up that the court had no jurisdiction of the action; that the complaint did not state facts sufficient to constitute a cause of action; that by the provisions of the dispensary law of South Carolina, approved March 6, 1896, the action could not be maintained against the defendants, for the reason that the acts complained of were by them performed in the discharge of duties imposed upon the defendants by the said law; and, if the action was maintainable, that there was a misjoinder of causes of action, in that the plaintiff sued for the recovery of the possession of personal property, and also for exemplary damages for the commission of a trespass in taking the same. It was denied that the seizures and detentions complained of were made with the intent to injure or oppress the complainant, and it was also denied that the property was of the value alleged in the complaint, or that the plaintiff had been damaged in the sum claimed. It was, further, specially averred that the packages were seized and detained because the liquors contained therein had not been inspected as required by the provision of an amendment to the dispensary law, adopted in 1897, and because of a failure to have attached to each package a certificate of inspection, as required by the statute.

By a stipulation in writing it was agreed that the issues of fact should be tried by the court without a jury. At the trial, as appears by a bill of exceptions allowed by the presiding judge, the court, on the request of counsel for the defendants, passed upon the matters of law heretofore referred to and also upon several propositions of law relied on by the defendants, that is, that the dispensary law was not in conflict with the

Constitution of the United States and was a valid exercise of the police power of the State, particularly by reason of the provisions of the act of Congress of 1890, known as the Wilson act. Each of these propositions of law was decided adversely to the defendants, and an exception was noted.

The facts found by the court were: "That the property described in the complaint is the property of the plaintiff, and that the value thereof is the sum of one thousand dollars, and that the damages to the plaintiff from the detention of the said property by the defendants is the sum of one thousand dollars." And, as matter of law, the court found "That the plaintiff is entitled to judgment against the defendants for the recovery of the possession of the said property described in the complaint, or the sum of one thousand dollars — value of said property — in case delivery thereof cannot be had, and for the further sum of one thousand dollars damages." Judgment was entered in conformity with the findings. A writ of error having been allowed, the cause was brought to this court for review.

Mr. William A. Barker, Attorney General of the State of South Carolina, for plaintiffs in error.

Mr. J. P. Kennedy Bryan for defendant in error.

Mr. Justice White, after making the foregoing statement, delivered the opinion of the court.

Counsel for plaintiffs in error discuss in their brief the contentions that the Circuit Court erred in holding that it had jurisdiction of the action and that there was not a misjoinder of causes of action, and also assert that the court erred in refusing to hold that the dispensary law of South Carolina was a valid enactment.

We shall dispose of the case upon the jurisdictional question, as it is manifest that the amount of recovery to which the plaintiff was entitled, upon the construction put upon the complaint by its counsel and acted upon by the trial court, could not equal the sum of two thousand dollars.

In his brief, counsel for defendant in error says:

"It is clear that the complaint is a case for recovery of personal property and for damages for its detention. The allegations in the complaint as to the wrongful taking of the property are not by way of stating a cause of action for malicious trespass, but, under the law of the State of South Carolina, are necessary as allegations of wrongful seizure, wrongful taking, and support an action for recovery of personal property and damages for detention, without a previous demand before the suit, and the court, by its judgment, so construed the complaint and gave judgment in conformity to the code. . . .

"The Circuit Judge has treated the complaint as an ordinary action for recovery of personal property and for damages for its detention, and has found the title of the property in the plaintiff, and has found the *damages for detention.* He has found no other damages; he has found no damages for malicious taking, he has found no damages for malicious trespass, he has found only '*damages for detention.*' And those damages, as matter of fact, were testified to as being at least twelve hundred dollars. The Circuit Judge has found them to be one thousand dollars, and they are conclusive as matters of fact, and are the usual damages accompanying the successful plaintiff who recovers judgment against the defendants for recovery of possession of personal property and damages incident to wrongful detention. The defendants, therefore, have no possible cause of complaint."

In determining from the face of a pleading whether the amount really in dispute is sufficient to confer jurisdiction upon a court of the United States, it is settled that if from the nature of the case as stated in the pleadings there could not legally be a judgment for an amount necessary to the jurisdiction, jurisdiction cannot attach even though the damages be laid in the declaration at a larger sum. *Barry* v. *Edmunds*, 116 U. S. 550, 560; *Wilson* v. *Daniel*, 3 Dall. 401, 407.

As by section 914 of the Revised Statutes of the United States the practice, pleadings and forms and modes of pro-

ceedings in actions at common law in a Circuit Court of the United States are required to conform, as near as may be, to those prevailing in the state court, and as by section 721 the laws of the several States are made rules of decision in trials at common law in the courts of the United States, in cases where they apply, *Bauserman* v. *Blunt*, 147 U. S. 647, we will examine the laws of South Carolina and the decisions of its courts, in order to ascertain the nature of the state statutory action to recover possession of personal property, and the rights of the parties thereunder.

The action of claim and delivery of personal property, under the code of South Carolina, is one of the class of statutes referred to by Judge Cooley, in his treatise on Torts, (note 2, p. 442,) which permits the plaintiff in an action of replevin to proceed in it as in trover, and recover the value of the property in case the officer fails to find it to return to the plaintiff on the writ. The proceeding was introduced into the legislation of South Carolina by the code of procedure adopted in 1870, Title 8, c. 1, 14 Stats. S. C. 423, which provided in section 269 (p. 480) that, upon the making of an affidavit containing certain requisites and the giving of a bond, the plaintiff might obtain an immediate delivery of the property. By section 285, c. 3, (p. 484) it is provided that "In an action for the recovery of specific personal property, if the property have not been delivered to the plaintiff, or if it have, and the defendant by his answer claim a return thereof, the jury shall assess the value of the property, if their verdict be in favor of the plaintiff; or if they find in favor of the defendant, and that he is entitled to a return thereof; and may at the same time assess the damages, if any are claimed in the complaint or answer, which the prevailing party has sustained by reason of the detention or taking and withholding such property." In section 301, c. 6, (p. 488) it is provided: "In an action to recover the possession of personal property, judgment for the plaintiff may be for the possession, or for the recovery of possession, or the value thereof, in case a delivery cannot be had, and of damages for the detention." By section 300 it is provided that, "Whenever damages are

recoverable, the plaintiff may claim and recover, if he show himself entitled thereto, any rate of damages which he might have heretofore recovered for the same cause of action."

Prior to the code, by a statute passed December 19, 1827, No. 2433, entitled "An act to alter the law in relation to the action of trover and for other purposes," 6 S. C. Stats. 337, it was provided that upon the giving of a bond and the making of an affidavit by a plaintiff who intended to commence an action of trover for the conversion of any specific chattel, that the chattel belonged to the plaintiff and had been converted by the defendant, an order might issue requiring the defendant to enter into a bond with sufficient surety, for the production of the chattel to satisfy the plaintiff's judgment in case he should recover against the defendant or defendants, and it was declared that such specific chattel should be liable to satisfy the plaintiff's judgment to the exclusion of other creditors. Under this act the surety might take the body of the defendant and keep him in custody until he gave the required security. *Poole* v. *Vernon*, 2 Hill, 667.

The measure of damages in South Carolina in an action of trover was early settled in that State. Thus, in 1792, in the case of *Buford* v. *Fannen*, 1 Bay, 270, an action of trover to recover the value of several negroes and a horse, after proving the value of the horse, the plaintiff offered evidence of consequential damages sustained by the loss of his crop. The trial judge having refused to receive the evidence, the case came before the Superior Court on a motion for a new trial. Chief Justice Rutledge was of opinion that this kind of testimony might be allowed in some cases, and was for granting a new trial, but the court ruled otherwise, the following opinions being delivered (p. 273):

Waties, J. "It is of great importance to keep different issues distinct, that the parties in one form of action, may not be surprised by evidence which belongs to another. The evidence which the plaintiff wished to produce, would have been admissible in trespass; but was, I think, properly rejected in this action. Where there has been an unlawful taking, either trespass or trover will lie; but if the party proceeds in trover,

he waives the tort, except as it is evidence of a conversion, and can only have damages for the value of the property converted, and the use of it while in the defendant's possession. The real value of the property is not always the sole measure of damages; if the conversion of it is (or may reasonably be supposed to be) productive of any benefit to the defendant, the jury may give additional damages for it; as where trover is brought for money in a bag, interest ought to be allowed by way of damages for the detention; so, in this case, if the negroes had not been delivered, damages could be given for the labor of the negroes; for the use of money or negroes is a certain benefit to the party who converts them, and he ought to pay for it. But where he acquires no gain to himself by the conversion, it does not appear to me that he is answerable for any damages above the real value of the thing converted; if he was, he would be answering for a mere *delictum*, for which he is not liable in trover. By waiving the trespass in this action, which the plaintiff must do, he waives, I conceive, every kind of personal wrong which is unattended with any gain to the trespasser; he releases him from everything which death would release him from. If, for instance, the defendant had been dead at the time of bringing this suit, what could the plaintiff, in any form of action, have recovered from his executors? The same amount which he has now recovered and no more, that is the value of the horse taken. Or damages for the use of the negroes, while they were in the defendant's possession; but nothing for the loss of crop, which proceeded *ex delicto*, and produced no benefit to the defendant. For the same reason, as this action is founded in property only, and no damages can be allowed for the mere *delictum*, I think the evidence offered was not admissible, and that the judge was right in refusing it.

"Bay, J., thought, that as in an action of trover, the tort was waived, all its consequences were relinquished with it. The very nature of the action supposed that the defendant came lawfully into possession; and, if so, no damages could or ought to be given till the true owner made his demand; from which time only, damages ought to be calculated. And

where no specific demand was proved, then from the time of the commencement of the action; and relied on the case of *Cooper et al* v. *Chitty et al.*, 1 Burr. 31, where the nature of this action is particularly defined; also 3 Burr. 1364–65; 2 Esp. 353."

In 1818, in the case of *Banks* v. *Hatton*, 1 N. & McC. 221, an action of trover to recover the value of three negroes, a verdict having been rendered for the plaintiff, a new trial was asked for, among other grounds, because the damages were excessive. In the course of the opinion of the appellate court granting the motion, Mr. Justice Colcock said on this branch of the case (p. 222):

"It is stated, that the presiding judge instructed the jury, that they were at liberty to give 'smart money' in estimating the damages. In the action of trover, the correct measure of damages is the value of the property, and interest thereon; or if the action be for the conversion of negroes, the value of their *labor*, in addition to the value of the negroes. It is impossible to determine by what rule the jury have been governed; but from the amount of the verdict, it is highly probable, that they were influenced by the charge of the presiding judge, and I therefore think the defendant entitled to a new trial on this ground."

On a subsequent appeal from the new trial granted in the case, Mr. Justice Nott, with whom four justices concurred, said (Ib. p. 223):

"Damages for the detention, may be given according to the nature of the thing converted or detained; as for instance, for the use of money, the interest may be made the measure of damages, or the value of their labor, in the case of negroes. *Buford* v. *Fannen*, 1 Bay, 270. Sometimes the increased value may be added, as was decided in the case of *Kid and Mitchell*, in this court (*post*). The defendant is not to be benefited by his own wrong. Neither can the rights of the plaintiff be affected by the death of the destroyer of the property after demand and refusal."

In *McDowell* v. *Murdock*, 1 N. & McC. 237, an action of trover for the value of two negroes, Mr. Justice Nott, in deliv

ering the opinion of the court, held that the defendant was entitled to a new trial, because, among other grounds, of an erroneous instruction to the jury as to the rule of damages, said (p. 240):

"It has lately been determined by this court, in several cases, that a jury cannot give *vindictive* damages in an action of *trover*. The *value* of the property, with such damages as must *necessarily* be supposed to flow from the *conversion*, is the only true measure. Such, for instance, as the *work* and *labor* of negroes; interest on the value of dead property, etc."

In 1853, in *Harley* v. *Platts*, 6 Richardson, 310, an action of trover brought to recover the value of four slaves, a new trial asked for on the ground of excessive damages was refused, it being held that the verdict was warranted by the evidence, under the rule allowing the jury to give the highest value up to the time of trial, with interest, or hire. Glover, J., delivering the opinion of the court, said (p. 318):

"In trover, the jury is not limited to finding the mere value of the property at the time of conversion; but may find, as damages, the value at a subsequent time, at their discretion. 3 Steph. N. P. 2711. The jury may give the highest value up to the time of trial. *Kid* v. *Mitchell*, 1 N. & McC. 334. In *Burney* v. *Pledger*, 3 Rich. 191, Judge O'Neall says, 'That the plaintiff is entitled to recover for the value of the property at the time of the trial, with interest; or for the value of the property at the time of the trial, with hire from the conversion, as may be most beneficial.' And in *Rodgers* v. *Randall*, 2 Sp. 38, it was held that the jury have a discretion between the highest and lowest estimates.

"Governed by these rules, so long and so repeatedly established, the evidence appears to have authorized the conclusion attained by the jury in this case."

That the decisions referred to are applicable under the code was recognized in the case of *Sullivan* v. *Sullivan*, (1883) 20 S. C. 509, an action of claim and delivery to recover the possession of certain notes with damages for their detention, where it was held by the appellate court that, in addition to a recovery of the notes, the plaintiff was entitled to recover

the amount they had diminished in value while in the hands of defendant. After quoting section 298 (formerly section 300) of the code, which we have heretofore referred to, the court said (p. 512):

"The code has made no material changes in the primary rights of parties, or in the causes of action, nor has it given any new redress for wrongs perpetrated. It has only changed the mode by which such redress is reached and applied. The rights and remedies (using the term 'remedy' in the sense of 'redress') are still the same.

* * * * *

"The action below was an action for the recovery of personal property and damages for its detention. It was an action in the nature of the old action of trover. It will not be denied that in actions of that kind, under the former practice, (as a general rule,) damages for detention beyond the property itself could be, and were uniformly recovered, such damages being measured by different rules, according to the character of the property and the circumstances of each case. See case of *McDowell* v. *Murdock*, 1 Nott & McCord, 237, where the court said: 'It has lately been determined by this court, in several cases, that a jury cannot give vindictive damages in an action of trover. The value of the property, with such damages as must necessarily be supposed to flow from the conversion, is the true measure. Such, for instance, as the work and labor of negroes; interest on the value of dead property.' *Buford* v. *Fannen*, 1 Bay, 2d ed. 273; *Harley* v. *Platts*, 6 Rich. 318; *Kid* v. *Mitchell*, 1 Nott & McCord, 334."

A recent decision construing the provisions of the action of claim and delivery of personal property is *Loeb* v. *Mann*, 39 S. C. 465, in which the defendant, a sheriff, was alleged to have wrongfully and unlawfully taken from the plaintiffs and to have unjustly detained from them certain liquors. Bond having been given, the goods were taken from the possession of the defendants and delivered to the plaintiffs. The appellate court, in the course of its opinion, held that the trial judge erred in permitting evidence of expenditures by the plaintiffs for hotel bills, railroad fare and attorney's fees, and

declared that such damages were not recoverable for the *detention* of the property. The court said (p. 469):

"It is urged that this action of 'claim and delivery' is peculiar in this, that the law expressly gives to the prevailing party damages in addition to costs and disbursements. It is true that section 283 of the code provides as follows:

"'In an action for the recovery of specific personal property, if the property have not been delivered to the plaintiff, or if it have, and the defendant by his answer claims a return thereof, the jury shall assess the value of the property, if their verdict be in favor of the plaintiff, or if they find in favor of the defendant, and that he is entitled to a return thereof; may at the same time assess the damages, if any are claimed in the complaint or answer, which the prevailing party has sustained by reason of the detention or taking and withholding such property,' etc. What damages? Why, surely such damages as 'may have been sustained by reason of the seizure and detention of the property itself; that is to say, by direct and proximate injury of the property in question, or in reducing its value; and not for the purpose of allowing a party to reimburse himself as to consequential losses alleged to have been sustained in the prosecution of the case, in respect to the speculative value of time lost, and the payment of the bills of railroads and hotels, lawyers' fees,' etc."

After reviewing authorities in support of the proposition that counsel fees were not allowable as damages for the detention of property, for the reason that they could not be said to be the *necessary* result of the act done by the defendant, the court said (p. 471):

"It is true that the decided cases do not seem to be as full and clear in reference to the other items of expenditures claimed here as damages; but we confess that in respect to damages, we are unable to draw a distinction in principle between expenses incurred in paying lawyers' fees and in making a charge for the speculative loss of time and paying railroad and hotel bills, etc."

Under the decisions to which we have referred, it is evident

that, in the case at bar, the measure of damages for the detention was interest on the value of the property from the time of the wrong complained of. This rule of damages has been held by this court to be the proper measure even in an action of trespass for a seizure of personal property where the facts connected with the seizure did not entitle the plaintiff to a recovery of exemplary damages. An action of this character was the case of *Conard* v. *Pacific Insurance Co.*, 6 Pet. 262. In the course of the opinion there delivered by Mr. Justice Story, the court held that the trial judge did not err in giving to the jury the following instruction:

"The general rule of damage is the value of the property taken, with interest from the time of the taking down to the trial. This is generally considered as the extent of the damages sustained, and this is deemed legal compensation with reference solely to the injury done to the property taken, and not to any collateral or consequential damages, resulting to the owner, by the trespass."

Indeed the same rule was in effect reiterated in *Watson* v. *Sutherland*, 5 Wall. 74, 79, where it was substantially held that "loss of trade, destruction of credit and failure of business prospects" could not be recovered in an action at law where malice or bad faith was not an ingredient, because such damages were collateral or consequential as regards a seizure of personal property, and could only be recovered at law where the issue of bad faith was involved. In other words, that however at law such damages might be considered when the suit was based upon a malicious trespass they were not a proximate result of an injury to property caused by an illegal seizure thereof.

The courts of South Carolina, as we have seen, have held that in an action of trover *consequential* damages are not recoverable, and have also held that in the action of claim and delivery damages for the detention must have respect to the property and to a direct injury arising from the detention. Destruction of business not being of the latter character, it follows that the special damages averred in the complaint were not recoverable.

Syllabus.

It results that as the plaintiff's action was solely one for claim and delivery of property alleged to have been unlawfully detained and for damages for the detention thereof, the amount of recovery depended first upon the alleged value of the property, which in the present case was one thousand dollars, and such damages as it was by operation of law allowed to recover in the action in question. As, however, by way of damages in an action of this character, recovery was only allowable for the actual damage caused by the detention, and could not embrace a cause of damage which was not in legal contemplation the proximate result of the wrongful detention, and such recovery was confined, as we have seen, to interest on the value of the property, it results that there was nothing in the damages alleged in the petition and properly recoverable adequate, when added to the value of the property, to have conferred upon the court jurisdiction to have entertained a consideration of the suit. Upon the face of the complaint, therefore, the Circuit Court was without jurisdiction over the action, and it erred in deciding to the contrary.

The judgment of the Circuit Court of the United States for the District of South Carolina is reversed with costs and the cause is remanded to that court with directions to dismiss the case for want of jurisdiction.